

# BCI EXHIBIT

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X  
5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----X  
11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*  
13 DEPOSITION OF ROBERT EDWARD DIAMOND, JR.  
14 New York, New York  
15 September 11, 2009  
16

17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24378  
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<p>1 2 3 4 5 September 11, 2009 6 10:35 a.m. 7 8 9 Deposition of ROBERT DIAMOND, held 10 at the offices of Jones Day, LLP, 222 East 41st 11 Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: ROBERT GAFFEY, ESQ. 8 BRIDGET CRAWFORD, ESQ. 9 10 BOIES, SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 5301 Wisconsin Avenue, NW 13 Washington, DC 20015 14 BY: HAMISH HUME, ESQ. 15 JONATHAN SCHILLER, ESQ. 16 17 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 18 Attorneys for the Creditors Committee 19 51 Madison Avenue 20 New York, New York 10010 21 BY: ROBERT DAKIS, ESQ. 22 23 24 25</p>
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<p>1 2 APPEARANCES: 3 JENNER &amp; BLOCK, LLC 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: DAVID C. LAYDEN, ESQ. 8 9 HUGHES, HUBBARD &amp; REED, LLP 10 Attorneys for the SIPA Trustee 11 One Battery Park Plaza 12 New York, New York 10004-1482 13 BY: WILLIAM MAGUIRE, ESQ. 14 FARA TABATABAI, ESQ 15 16 Also Present: 17 THOMAS E. HOMMEL, ESQ. 18 Lehman Brothers Holdings 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

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2 ROBERT EDWARD DIAMOND, JR.,

3 called as a witness by the parties,

4 having been duly sworn, testified as

5 follows:

6 EXAMINATION BY

7 MR. GAFFEY:

8 Q. Good morning, Mr. Diamond. We've met  
9 briefly before. My name is Bob Gaffey. I am with  
10 Jones Day. We are special counsel to the estate  
11 of Lehman Brothers Holdings, Inc., and as I am  
12 sure you know, what we are going to focus on today  
13 is the transaction in September of 2008 in which  
14 Barclays purchased assets of Lehman.

15 Just a few quick ground rules. If you  
16 need a break at any time, just say so and we will  
17 obviously take it. I would prefer if there is a  
18 question pending at that point that you answer the  
19 question and then take whatever break you like.

20 If at any point you need me to  
21 rephrase a question, so that we understand each  
22 other, just speak up and I will try to do that.

23 I tell this to every witness. I am a  
24 bit of a fast talker, so sometimes I get a  
25 cluttered record, and I will try and speak slowly,

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2 with Barclays Capital, taking additional  
3 responsibility for Barclays Global Investors circa  
4 2002, 2003, and for Barclays Wealth around the  
5 time I joined the board.

6 Q. Now, you mentioned joining the board,  
7 but the board of which entity, sir? Entity or  
8 entities?

9 A. Barclays PLC, I think. I'm not very  
10 good at corporate identity.

11 Q. And how long have you been a board  
12 member?

13 A. About the same time, 2004, 2005. I  
14 think you might have to check the records for  
15 that, but I'm sure there will be a record of it.

16 Q. For our purposes, it suffices if I  
17 ask, you were on the board -- you held these  
18 positions you described and you were on the board  
19 in and around September of 2008, when the events  
20 we are talking about were going on; is that right?

21 A. Yeah, that would be right.

22 Q. In September of 2008, Mr. Diamond,  
23 would you describe to me, please, when it first  
24 hit your screen that there may be a potential  
25 transaction to be had between Barclays and Lehman?

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2 and ask you to try to wait until I have finished a  
3 question before you answer it, for the sake of  
4 Mary here, so she can get down clearly what my  
5 questions are and what your answers are.

6 How are you employed, sir?

7 A. Sorry.

8 Q. Can you tell me by whom you are  
9 employed?

10 A. Barclays.

11 Q. And would you tell me, please,  
12 Mr. Diamond, what is your title at Barclays, title  
13 or titles?

14 A. I am president of Barclays PLC and  
15 chief executive of the investment banking and  
16 investment management businesses.

17 Q. And how long have you held those two  
18 positions?

19 A. I have been with Barclays for,  
20 goodness, 13 years. I have been president of  
21 Barclays PLC since circa 2004, 2005. I forget the  
22 exact date.

23 I have been chief executive of the  
24 investment banking/investment management  
25 businesses progressively since 2007, beginning

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2 A. It wasn't in September. I don't know  
3 how to answer your question.

4 Q. When did Barclays first give  
5 consideration to purchasing all or part of Lehman  
6 or its assets?

7 A. There was a call I received within a  
8 month after the Bear Stearns-JP Morgan deal from  
9 one of the undersecretaries at the U.S. Treasury  
10 that asked unofficially, if there were a situation  
11 with Lehman Brothers similar to that with Bear  
12 Stearns, whether there was a price at which  
13 Barclays would be interested in purchasing Lehman,  
14 and if so, what -- how would we see working --  
15 what would we need in terms of a working  
16 relationship with the U.S. Treasury.

17 Q. Who was the undersecretary who called  
18 you?

19 A. Bob Steel.

20 Q. Had you known Mr. Steel prior to  
21 this -- had you spoken to or known Mr. Steel prior  
22 to this telephone call?

23 A. Yes.

24 Q. How long had you known Mr. Steel?

25 A. Timing can be way off, but it is in

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 the order of two to three years, something like</p> <p>3 that.</p> <p>4 Q. It is not a week, it is a period of a</p> <p>5 couple of years?</p> <p>6 A. Yeah.</p> <p>7 Q. When Mr. Steel -- did anybody else</p> <p>8 participate in that telephone conversation or just</p> <p>9 the two of you?</p> <p>10 A. I don't know of anyone else that was</p> <p>11 on the phone.</p> <p>12 Q. And tell me as best you remember, sir,</p> <p>13 what you said to Mr. Steel when he made this</p> <p>14 inquiry of you.</p> <p>15 A. I don't recall what I said.</p> <p>16 Q. Did you express any interest in, for</p> <p>17 lack of a better term, the proposal that he was</p> <p>18 making or the suggestion that he made?</p> <p>19 A. My best recollection of my reaction,</p> <p>20 without recalling what words I used, was that that</p> <p>21 was interesting and thought provoking, and that I</p> <p>22 appreciated getting the call.</p> <p>23 Q. And in sum or substance, did you say</p> <p>24 anything else to him other than it was interesting</p> <p>25 and thought provoking and thanking him for -- that</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 you appreciated getting the call?</p> <p>3 A. My recollection is I did mostly</p> <p>4 listening.</p> <p>5 Q. Did you say anything in that call to</p> <p>6 express an interest in going forward with the idea</p> <p>7 in any way?</p> <p>8 A. I don't recall that. I certainly</p> <p>9 don't recall that, but as I said, I don't recall</p> <p>10 what was said.</p> <p>11 Q. Your memory of that conversation is,</p> <p>12 to sort of sum it up, your response, whatever</p> <p>13 words you used, was essentially noncommittal one</p> <p>14 way or the other?</p> <p>15 A. That's absolutely correct.</p> <p>16 Q. Now, after that call with Mr. Steel --</p> <p>17 well, after the call with Mr. Steel, did you relay</p> <p>18 to anyone else that the call had occurred?</p> <p>19 A. Yes.</p> <p>20 Q. Who did you talk to about it?</p> <p>21 A. The first conversation was with John</p> <p>22 Varley.</p> <p>23 Q. Just to be a bit efficient here, let</p> <p>24 me cut ahead, and I will ask you about the</p> <p>25 conversation with Mr. Varley, but was there a</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 group of people that you called to tell? Was it</p> <p>3 more than Mr. Varley who you let know about the</p> <p>4 call? You said he was the first conversation.</p> <p>5 A. Well, over time, up until today, there</p> <p>6 was certainly other conversations, but in the</p> <p>7 immediate aftermath, which is what I suspect you</p> <p>8 are asking --</p> <p>9 Q. It is.</p> <p>10 A. -- my conversation was with John.</p> <p>11 Q. And what did you say to Mr. Varley and</p> <p>12 what did he say to you?</p> <p>13 A. I can only give you a sense of what I</p> <p>14 said, because I think it is impossible to recall</p> <p>15 the words or the exact --</p> <p>16 Q. Sure. I am really looking for sum or</p> <p>17 substance.</p> <p>18 A. I think the sum or substance was, it's</p> <p>19 a positive that we were considered when thoughts</p> <p>20 like this are going through the minds of people of</p> <p>21 the Treasury, so the fact that Barclays is being</p> <p>22 consulted and called is a positive.</p> <p>23 Two, I most likely asked what his</p> <p>24 visceral reaction was and provided my visceral</p> <p>25 reaction, and my visceral reaction was, you know,</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 prior to Bear Steams-JP Morgan, it had never</p> <p>3 dawned on me that there would be an opportunity</p> <p>4 for an acquisition, deal, whatever the terminology</p> <p>5 would be, with one of the U.S. bulge-bracket firms</p> <p>6 at a distressed price. And while Bear Steams</p> <p>7 wasn't in my mind one of the bulge-bracket firms,</p> <p>8 it was a big U.S. firm that was at a distressed</p> <p>9 price, so it would warrant thinking through.</p> <p>10 And I think the context of that that's</p> <p>11 important is, we had had many calls over the years</p> <p>12 at Barclays and at Barclays Capital about were we</p> <p>13 interested in doing things that were strategic</p> <p>14 between Barclays Capital and other firms,</p> <p>15 certainly from Bear Steams over the years, and we</p> <p>16 never had an interest, because the history was</p> <p>17 very clear that combining two investment banks had</p> <p>18 no success background. They were generally very</p> <p>19 poor deals.</p> <p>20 I think the new information that was</p> <p>21 coming in the wake of Bear Steams, or actually</p> <p>22 through Bear Steams and in the wake of Bear</p> <p>23 Steams, is if in fact it happens at a distressed</p> <p>24 price as opposed to a premium or book value price,</p> <p>25 does that change the opportunity.</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 And that was the sum and substance of</p> <p>3 the conversation with John, as opposed to Lehman</p> <p>4 versus someone else. It was more, the paradigm</p> <p>5 shift was around distress.</p> <p>6 The second part we discussed was that</p> <p>7 when we realized that the market turmoil around</p> <p>8 July and August of 2007 was going to be real and</p> <p>9 serious, the immediate thing John and I talked</p> <p>10 about in terms of opportunity was, is this going</p> <p>11 to give us an opportunity to strategically improve</p> <p>12 the position of Barclays and Barclays Capital and</p> <p>13 BGI as well. In other words, if we look at the</p> <p>14 overall organization of Barclays and our</p> <p>15 businesses, are we going to be presented -- first</p> <p>16 of all, we're going to be presented with terrible</p> <p>17 markets and a lot of challenges because this is</p> <p>18 going to be difficult.</p> <p>19 But if we can keep focused and keep</p> <p>20 driving our business, can we also see opportunity,</p> <p>21 and the opportunity that John and I talked to the</p> <p>22 board about in the immediate aftermath of</p> <p>23 recognizing it was going to be difficult was, this</p> <p>24 is going to present an opportunity for Barclays</p> <p>25 Capital to improve in the area where it has its</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 greatest opportunity, which is the U.S., where we</p> <p>3 are subscale. Top tier in U.K. and Europe and</p> <p>4 throughout Asia but subscale in the U.S.</p> <p>5 But interestingly, that initial</p> <p>6 conversation was completely about hiring people.</p> <p>7 We had never even contemplated doing a strategic,</p> <p>8 for the reason I said, as there was just no</p> <p>9 history of successful strategic.</p> <p>10 That was the conversation I had with</p> <p>11 John. Again, the words are hard to recall, but</p> <p>12 that was the spirit of the conversation.</p> <p>13 Q. Was he essentially in agreement with</p> <p>14 the thoughts you expressed or did he have a</p> <p>15 contrary view? Again, just in substance, what was</p> <p>16 his response to the things that you said?</p> <p>17 A. Well, keep in mind that John and I had</p> <p>18 already discussed that this is going to present</p> <p>19 opportunities. We said that to the board, and we</p> <p>20 said specifically those opportunities will be best</p> <p>21 in the U.S., both because we were subscale, but</p> <p>22 also because we saw big writeoffs from Citi and</p> <p>23 Merrill, two of the big U.S. firms.</p> <p>24 So there was a paradigm shift. So</p> <p>25 there was a basis for the conversation. I think</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 both of us were somewhat dismissive of whether</p> <p>3 Lehman presented that opportunity or not. So it</p> <p>4 was much more about distress price, strategic</p> <p>5 opportunity, versus Lehman specific, because</p> <p>6 frankly we had never done much work on it.</p> <p>7 Q. When you say -- I just want to probe a</p> <p>8 little bit on the word that you used. You say you</p> <p>9 were dismissive about the Lehman thing. Do you</p> <p>10 mean that you didn't know enough one way or</p> <p>11 another to know?</p> <p>12 A. "Dismissive" is probably a poor choice</p> <p>13 of words. It wasn't focused on Lehman as much as</p> <p>14 it was focused on there might be strategic</p> <p>15 opportunities.</p> <p>16 Q. As a general matter, without regard to</p> <p>17 particular --</p> <p>18 A. And the real focus was, does the</p> <p>19 distressed price as opposed to a book value or</p> <p>20 premium price change our outlook, which John and I</p> <p>21 have always looked arms on since the day we opened</p> <p>22 BarCap, which is that growth would be organic, not</p> <p>23 strategic.</p> <p>24 There is always opportunities to buy</p> <p>25 investment banks, but there is very little</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 evidence that it has ever worked, because of the</p> <p>3 nature of investment banking being so much about</p> <p>4 the people.</p> <p>5 Q. So this sort of generalized potential</p> <p>6 for opportunity that you are describing, markets</p> <p>7 broiled, you know, there is a possibility for a</p> <p>8 purchase or deal of some kind that would involve a</p> <p>9 distressed price as opposed to a book value or</p> <p>10 premium price, was that -- did that form the</p> <p>11 thinking that you and Mr. Varley had about what</p> <p>12 opportunities you could look for?</p> <p>13 That is a very bad question. He is</p> <p>14 going to say vague and ambiguous and he's going to</p> <p>15 be right.</p> <p>16 How big a focus was it for you and</p> <p>17 Mr. Varley that if you were going to do a deal</p> <p>18 with anybody, it would be at a distressed price as</p> <p>19 opposed to a book value or premium price?</p> <p>20 A. I think it was always a given. You</p> <p>21 need to put it in the context of -- it is not like</p> <p>22 we spent much time over the years thinking about</p> <p>23 acquisitions, because it was kind of a given that</p> <p>24 mergers in investment banking don't work, CSFB and</p> <p>25 DLJ probably being the poster child for value</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 destruction, Citi-Salomon to some extent being</p> <p>3 another one.</p> <p>4 So every deal that was out there</p> <p>5 had -- and John and I had been committed, while I</p> <p>6 was CEO of BarCap and during the various times</p> <p>7 when we were on the executive committee together</p> <p>8 and he was head of retail banking and chief</p> <p>9 financial officer and then the chief executive and</p> <p>10 my boss, and while we were both on the board, had</p> <p>11 always been very focused on organic growth and had</p> <p>12 built the whole plan around it.</p> <p>13 And so I used that word "dismissive"</p> <p>14 which is probably wrong, but in a sense we,</p> <p>15 because of the history, had just always kind of</p> <p>16 put -- never considered a strategic deal in</p> <p>17 investment banking. We had done strategic deals</p> <p>18 in retail banking, for example, in Spain and in</p> <p>19 the U.K., but not in investment banking.</p> <p>20 Is that what you are asking?</p> <p>21 Q. Yes, it is and thank you.</p> <p>22 Again, this is all very generally</p> <p>23 speaking on my part, but in 2008, after Bear</p> <p>24 Stearns-JP Morgan and with things changing as they</p> <p>25 were in the general economy, is it fair to say</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that your view was, while Barclays had not had an</p> <p>3 interest prior to that in a strategic -- in a</p> <p>4 strategic partnership on the investment banking</p> <p>5 side, it could now look for an opportunity at a</p> <p>6 distressed price as opposed to a book value or</p> <p>7 premium price?</p> <p>8 MR. HUME: We will object to that</p> <p>9 question as compound and vague.</p> <p>10 Q. Nonetheless, I think you can answer</p> <p>11 it.</p> <p>12 A. I'm not sure what the question is.</p> <p>13 Can you try to hone in on the question?</p> <p>14 Q. What I am trying to hone in on is how</p> <p>15 important was it to you and Mr. Varley, if an</p> <p>16 opportunity did arise for BarCap, that it would</p> <p>17 have to be at a distressed price as opposed to a</p> <p>18 book value or premium price?</p> <p>19 MR. HUME: I object again as compound</p> <p>20 and vague, in terms of precisely what you</p> <p>21 mean by book value or premium price.</p> <p>22 Q. I -- I think you can answer the</p> <p>23 question, sir.</p> <p>24 A. Well, we had, from the beginning,</p> <p>25 focused on organic, hiring people. The Alpha Plan</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 in 2004 was a great example of that. We doubled</p> <p>3 the size of the firm in under four years, and it</p> <p>4 was done organically without acquisition.</p> <p>5 I think in the history of BarCap there</p> <p>6 had been, I mean, like a 5 million dollar</p> <p>7 acquisition of a tiny business at one point. So</p> <p>8 in any scale, it was never anything we considered.</p> <p>9 We recognized the value destruction of these</p> <p>10 deals.</p> <p>11 The first reaction to Bear Stearns</p> <p>12 clearly was one of market dislocation and fear and</p> <p>13 the shock that Bear Stearns was -- virtually had</p> <p>14 to be rescued. We were still pursuing our organic</p> <p>15 strategy and still hiring in New York, but I think</p> <p>16 the combination of Bear Stearns-JP Morgan and the</p> <p>17 call from Bob Steel led to a discussion between</p> <p>18 John and I, which is, would we look at this</p> <p>19 differently at a distressed price than we would at</p> <p>20 a full market price.</p> <p>21 Now, I think one of the reasons book</p> <p>22 value is hard to -- no one knew what book values</p> <p>23 were at this point, so -- traditionally book value</p> <p>24 I would say, but in this period, I think that</p> <p>25 there was a lot of confusion around book value, so</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 I think it would probably be a poor choice of</p> <p>3 terms to have a discussion.</p> <p>4 But in spirit, I think what we are</p> <p>5 saying is the full price of the better market.</p> <p>6 Q. After the -- this conversation with</p> <p>7 Mr. Varley -- I want to sort of fast forward</p> <p>8 through the summer and get us to September, which</p> <p>9 is where we are going to spend most of our time</p> <p>10 today -- when is the next time that the issue of a</p> <p>11 potential deal with Lehman crossed, hit your desk</p> <p>12 or wound up on your screen?</p> <p>13 A. I'm not sure.</p> <p>14 Q. We know a deal of some kind was done</p> <p>15 in September of 2008?</p> <p>16 A. A deal of some kind was done in</p> <p>17 September of -- 2008 or --</p> <p>18 Q. 2008.</p> <p>19 A. 2008.</p> <p>20 Q. We are all sure of that.</p> <p>21 A. That's why it is the anniversary.</p> <p>22 Q. That's why I put the September 2008</p> <p>23 calendar there.</p> <p>24 In between this call from the</p> <p>25 undersecretary and this conversation with</p>

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2 Mr. Varley, and September of 2008, when the deal  
3 that has brought us here today occurred, what, if  
4 anything, happens next with respect to a potential  
5 for a deal with Lehman?

6 A. The context would be that we were  
7 working on various opportunities to increase scale  
8 in the U.S., so there were a number of projects  
9 that I was working on for John and for the board.  
10 Lehman in particular, without knowing the timing,  
11 because it is quite difficult, but from the time  
12 of the call from Bob Steel, over the next couple  
13 of months, with John's approval, the Barclays  
14 Capital executive committee took a look at, I  
15 suppose what you would expect, is there a  
16 combination of Lehman Brothers and Barclays  
17 Capital that makes sense, and if it does, is there  
18 a price at which it would make sense.

19 So I think step one was, is there any  
20 logic to the combination, what is that logic, and  
21 step two is financially how would it work.

22 There were at least two, possibly  
23 three, I can't recall, but at least two very good  
24 intense goes at that with the Barclays Capital  
25 executive committee, and there was also reporting

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2 kind begin with Lehman personnel about any  
3 potential transaction?

4 A. I knew this would come in handy.

5 Q. That's why we put it in front of you.

6 A. I may be off by a day. It is really  
7 hard. But I'm pretty sure it was on Friday, the  
8 12th of September.

9 Q. Tell me the nature, what you remember  
10 about that first contact, who initiated it, who  
11 was involved.

12 A. After conversations with Secretary  
13 Paulson and President Geithner, in the previous  
14 and earlier in that week, so over the course of  
15 somewhere in the six to seven days before that --  
16 I'm jumping ahead, you may want more detail -- the  
17 decision was made by the Barclays board, with the  
18 support of Secretary Geithner -- sorry, Secretary  
19 Paulson, it is now Secretary Geithner, and  
20 New York Fed President Geithner, that we would  
21 pursue due diligence to see if there was an  
22 opportunity.

23 And so with a number of my colleagues  
24 on Thursday, I flew to the United States and we  
25 had another board meeting scheduled for Friday

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2 of that to the group executive committee, although  
3 on a much briefer summarized form, because the  
4 group executive committee was four of us, two of  
5 which were John and I, and we were in constant  
6 contact on it.

7 And at some point prior to September,  
8 probably more likely the June-July time frame,  
9 John and I updated the board on, when we are  
10 talking about some of the other opportunities that  
11 we were looking at again to build scale, that  
12 Lehman is there as well, and reported to the board  
13 on the conversation and the phone call from Bob  
14 Steel.

15 Q. Who were the other two members of the  
16 group executive committee?

17 A. Frits Seegers and Chris Lucas.

18 Q. Now, there comes a point, does there  
19 not -- withdrawn.

20 What you have described to me up until  
21 now, do I understand correctly it is essentially  
22 an internal analysis at Barclays, there is no  
23 conversation with Lehman going on at this point?

24 A. Correct.

25 Q. At what point do conversations of any

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2 morning U.K. time, to give kind of the official  
3 go-ahead of whether or not our board would support  
4 us pursuing this deal or pursuing, I guess not a  
5 deal, but pursuing due diligence to see if there  
6 was the basis for a deal.

7 John Varley had had discussions during  
8 that week with Hector Sants at the FSA to make  
9 sure that our regulators were aware, and John and  
10 I had a number of conversations with  
11 Secretary Paulson and New York Fed President  
12 Geithner, and there came a point where we wanted  
13 to actually engage with Lehman Brothers.

14 So at the request -- I can't recall  
15 now, I think it was of President Geithner as  
16 opposed to Hank Paulson, I should put in a call to  
17 Dick Fuld and explain to him what our interest was  
18 and what it wasn't. So I called him Friday  
19 morning, after our board meeting and after we had  
20 approval, to arrange an off-site meeting, because  
21 I felt that -- you may recall this, but the TV  
22 cameras were out in front of the Lehman building  
23 by this time and I didn't want to go walking up  
24 into the Lehman building, and I thought it would  
25 be difficult for him to walk into our building, so



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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 I suggested some off-site locations.</p> <p>3 And he called back and said he would</p> <p>4 have his driver pick me up in front of my building</p> <p>5 and take me into Lehman through the -- what is</p> <p>6 it -- the garage, I guess, the back way. I agreed</p> <p>7 to do that. I felt it was difficult for him to</p> <p>8 get out of the building and be seen.</p> <p>9 So I went up the service elevator to</p> <p>10 the 31st floor and had somewhere around an hour,</p> <p>11 might have been a little bit less, might have been</p> <p>12 a little bit more, with Dick to lay out for him</p> <p>13 what our interest was and what it wasn't.</p> <p>14 And that was -- other than -- yes,</p> <p>15 that was the first meeting I had on this. For the</p> <p>16 sake of completeness -- I don't think this is what</p> <p>17 you asked, but I just want to make sure I have</p> <p>18 everything on the record -- there were one or two</p> <p>19 calls that I received from Dick over the previous</p> <p>20 six months, asking if we had an interest, and in</p> <p>21 each case, I explained to him -- in both cases.</p> <p>22 It is possible it was three. I think it was two.</p> <p>23 There might have been one or two that came</p> <p>24 together toward the end.</p> <p>25 What I explained to him is that Lehman</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 was an incredibly great firm, that we were really</p> <p>3 proud of what we had built, but that it was</p> <p>4 impossible for me to imagine how we would overcome</p> <p>5 the overlap and the risk associated with doing a</p> <p>6 deal at a market price. And in essence, the</p> <p>7 overlap and the risk was too great to even</p> <p>8 contemplate, and knowing, I guess from the market,</p> <p>9 that Lehman was at least considering something, it</p> <p>10 was very important to me to be very clear with him</p> <p>11 and not lead him on.</p> <p>12 And in essence, it was a way for me to</p> <p>13 say in the most polite way possible that there is</p> <p>14 no deal at a market price, the current market</p> <p>15 price, because of the risk and because of the</p> <p>16 overlap.</p> <p>17 Q. I want to back up a bit to the</p> <p>18 conversations with Secretary Paulson and</p> <p>19 President Geithner in the previous days, but let</p> <p>20 me first establish, when you met with Mr. Fuld on</p> <p>21 the 31st floor and went into the building on the</p> <p>22 service elevator, was anyone else present?</p> <p>23 A. Just Dick and I.</p> <p>24 Q. What had been the substance of your</p> <p>25 conversations with Secretary Paulson and</p>
Page 28	Page 29
<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 President Geithner about Lehman and in particular</p> <p>3 their recommendation that you should give Dick</p> <p>4 Fuld a call? Can you give that to me in sum or</p> <p>5 substance?</p> <p>6 A. Let me take them in piece parts.</p> <p>7 Q. Sure.</p> <p>8 A. Come to the last one about why they</p> <p>9 thought I should give him a call, because I think</p> <p>10 that is kind of different.</p> <p>11 The sum and essence of the</p> <p>12 conversations with Secretary Paulson and President</p> <p>13 Geithner -- I think with Secretary Paulson, who I</p> <p>14 had had, I guess, conversations with about this --</p> <p>15 I had had discussions with Bob Steel, as you know,</p> <p>16 and when Bob left to run Wachovia, my contact</p> <p>17 there was Tony Ryan, and we never really came back</p> <p>18 to this in any substance, other than I know you</p> <p>19 had the call.</p> <p>20 And I went back post the board meeting</p> <p>21 with the answer that if there were a distressed</p> <p>22 situation, yes, we would like a call, in</p> <p>23 substance. It wasn't exactly that, but in</p> <p>24 substance I did leave the word with the Treasury</p> <p>25 that if that situation came about, we would like</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 to know about it. We can't commit to anything, we</p> <p>3 can't say what we would do, but if it was a</p> <p>4 distressed situation, we would like to be on your</p> <p>5 list of calls, and I was very, very clear, because</p> <p>6 I didn't have approval from the board to lead,</p> <p>7 that anything could happen other than we would</p> <p>8 like a call.</p> <p>9 When it then appeared somewhere in</p> <p>10 this area, and again maybe from the 4th on or the</p> <p>11 3rd on, somewhere in that pen'od, when it was</p> <p>12 clear that there might be an interest -- and I</p> <p>13 suspect it was the same week of the 12th, but it</p> <p>14 could have been a little bit earlier, I think the</p> <p>15 sum and essence of Secretary Paulson's</p> <p>16 conversation was twofold.</p> <p>17 One is that certainly the Treasury</p> <p>18 would be pleased to have Barclays take a look at</p> <p>19 the situation, but he was very, very clear that he</p> <p>20 saw this as a situation where there would be no</p> <p>21 government money and was quite clear with me that</p> <p>22 unlike Bear Stearns, they were not prepared to put</p> <p>23 government money into this deal.</p> <p>24 With Secretary Geithner, it was</p> <p>25 slightly different, and I don't recall him being</p>

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 on the issue about the government money, I suspect  
3 because he knew Hank or Secretary Paulson had  
4 already had that conversation with me.  
5 Tim was encouraging me to call Dick  
6 directly, and I resisted because, as I said to  
7 President Geithner, the only way this would work  
8 for us, if it works at all, is at a distressed  
9 price, and at a distressed price this is a rescue  
10 and you are not going to want Dick Fuld there. So  
11 it is inappropriate for me to be having this  
12 conversation with Dick Fuld.  
13 I am happy to have the conversation  
14 and I am authorized by the board to have it with  
15 the Treasury or the Fed, but not directly with  
16 Lehman. We don't believe there is a market-based  
17 deal. It's only if you need a rescue and it's at  
18 a distressed price. Otherwise, the risks are  
19 going to be way too high.  
20 Q. When Geithner suggested that you call  
21 Fuld, did you have a sense that he had spoken to  
22 Fuld? Did he tell you -- I'm not quite sure how  
23 to frame this.  
24 Did he indicate to you that he had  
25 spoken to Fuld and a call was invited, he knew

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 I don't know if that's true. By the end of it, I  
3 said I think I figured this out.  
4 Q. There seemed to be a pattern?  
5 A. Yes.  
6 Q. Let's go back to the meeting with Fuld  
7 on the 31st floor, and I say that just to give us  
8 a time point. Whenever that was. You think it  
9 might have been the Friday --  
10 A. I'm pretty sure it was the Friday. I  
11 mean I could be off on days. I'm pretty sure it  
12 was the Friday. We didn't have the board meeting  
13 Friday morning and it wasn't Saturday. It was  
14 Friday.  
15 Q. And in that meeting with Dick Fuld,  
16 again in sum and essence, can you tell me what was  
17 the nature of the discussion, what did you say and  
18 what did he say, as best you remember?  
19 A. After the normal platitudes, my  
20 message was, in sum and essence, we have an  
21 interest if this is a rescue situation, meaning if  
22 this is a very, very distressed price. That will  
23 make it very difficult for you.  
24 I would like to work directly with  
25 your team and keep you informed, and if we were

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Fuld would take your call, as it were, or was he  
3 suggesting that you make a cold call to Fuld?  
4 There may be other possibilities, but you see the  
5 range I am talking about.  
6 MR. HUME: Just object to the compound  
7 and vague nature of the question.  
8 A. Try them one at a time and maybe we  
9 can get through them.  
10 Q. OK. When you spoke to Geithner, did  
11 he say, in sum and essence, I have spoken to Fuld  
12 and I would like you to call him?  
13 A. No.  
14 Q. Did he say, in sum or essence, I  
15 haven't spoken to Fuld but I think you should?  
16 A. Let me try to answer it. I think  
17 there were two or three times -- I said there is  
18 two or three times, and I can't remember, from my  
19 conversation with Bob Steel until my visit, where  
20 I had a call from Dick Fuld, and in each of those  
21 times, it was soon after I had had a conversation  
22 with President Geithner.  
23 I surmised later, after the rapidity  
24 of it, that after I would have a conversation with  
25 Secretary Geithner, he would ask Dick to call me.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 able to structure something, there would not be a  
3 role for you.  
4 Q. And again in sum and essence, if you  
5 would, what was Fuld's response?  
6 A. It was, in sum and essence, two  
7 things. One is, can't we do a deal as principals  
8 that's not a rescue, and I think I can help in a  
9 continued role.  
10 Q. And again, in essence, you said to him  
11 neither of those things were possible?  
12 A. Sorry. Yes. I caught myself there.  
13 Q. Have you had your deposition taken  
14 before?  
15 A. For this?  
16 Q. In anything?  
17 A. Why?  
18 Q. Just -- never mind. You don't even  
19 have to tell me.  
20 So you had told Fuld you wanted to  
21 work directly with his team. Did that happen?  
22 Did that come about? Tell me what happened next.  
23 A. A bit of speculation of why, but  
24 having had the go-ahead to do full due diligence  
25 once our board met again before U.S. opening

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 hours, and we had the go-ahead, we really  
3 struggled Friday to get any engagement from the  
4 senior Lehman team or their lawyers or access to  
5 the data. We think -- this is speculation -- that  
6 that's because they were dominated by B of A, and  
7 we had never been told that there was another bank  
8 looking at this, but we had suspected and then  
9 kind of heard through the market that B of A was  
10 looking at it.  
11 The first time I got engagement from  
12 the senior team, and the hours blended into the  
13 hours, I can assure you, I think was around  
14 somewhere between 8 and 11 p.m. Friday night. By  
15 this time we had had better access to the data  
16 room and had begun the due diligence on the  
17 positions, but it was between those hours roughly  
18 when I was able to get real engagement with the  
19 senior team, including Bart McDade, who was the  
20 last one of the senior team I saw that night.  
21 Q. Tell me, who was the senior team you  
22 met with, with McDade as the last one?  
23 A. I am going to try and do the best I  
24 can.  
25 Q. Sure.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 one-on-one meetings or were they --  
3 A. No. They were a combination of big  
4 group, small group, very focused on businesses.  
5 So for example, Jerry Donini had a deck and took  
6 me through how the equities business was  
7 performing, how it worked, how it was organized.  
8 I talked to him about the culture of Barclays  
9 Capital and how the fit might happen and what we  
10 were like.  
11 And then there was another group that  
12 came in with another business. The one that I  
13 spent most of my time on, because it was of the  
14 greatest interest to me, was the equity business.  
15 Q. So none of those were one on one?  
16 A. I also had various people coming in  
17 and out from my team. So, I don't recall Rich  
18 being there. I think Jerry was there for some of  
19 it. I think Benoit and Eric Bommensath might have  
20 been there for some of it.  
21 But there were many conference rooms  
22 and many people. By this time a lot of us were  
23 engaging with a lot of them, so there were  
24 meetings going on. So clearly the paradigm --  
25 "paradigm" is the wrong word. The engagement

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 A. But in each case I was meeting these  
3 people for the first time.  
4 There was a session with Alex Kirk,  
5 Jerry Donini, and there were one or two others.  
6 There were visits from time to time, I think the  
7 gentleman's name was Mark Shafir, who was the  
8 senior M&A banker who was running the deal for  
9 Lehman. I think it was Mark Shafir.  
10 And then having gone through those  
11 meetings, Ajay Nagpal was part of that meeting,  
12 and then after those, I had a chance to meet with  
13 Bart and we spent an hour or so together, and that  
14 was all -- I could be off by a few hours, but I am  
15 thinking it was kind of 8 to 11 p.m. on Friday  
16 night.  
17 Q. It is late at night on the Friday  
18 night?  
19 A. Yes. And it's in the lawyers'  
20 offices. I can't remember which lawyer.  
21 Q. Was the meeting with Bart one on one  
22 or were there --  
23 A. Yeah.  
24 Q. And the meetings with these other  
25 people, Kirk, Donini, et cetera, were they serial

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 shifted sometime late Friday.  
3 Q. In what way did it shift? It became  
4 more --  
5 A. We were getting attention and access.  
6 Q. You mentioned Rich and Jerry. Is that  
7 Rich Ricci and Jerry del Missier?  
8 A. Yes.  
9 Q. In addition to Rich Ricci and Jerry  
10 del Missier, who would you describe as your senior  
11 team on this thing, if anyone?  
12 A. The other members of my executive  
13 committee who were part of this in addition to  
14 Rich and Jerry were Tom Kalaris, Roger Jenkins,  
15 and Archie Cox, Archie having just joined. There  
16 were a number of very important senior people, but  
17 they reported directly to Rich or reported  
18 directly to Jerry.  
19 Q. I am really looking for your circle of  
20 top guys.  
21 A. I don't think I missed anyone.  
22 Q. Did you have any outside advice?  
23 A. Michael Klein.  
24 Q. Michael Klein. What was -- when did  
25 Michael Klein first get involved in the project?

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A. Again, I could be late by a day, but I'm pretty sure I have it right. Friday morning -- we had arrived late Thursday night, and we decided we really should have -- we very much wanted to do the due diligence ourselves. This was the single most important risk decision you could possibly make.

But it would be good to have some strategic advice, and a number of my colleagues, in this case Hans-Joerg Rudloff, who was chairman of our operations in Barclays Capital and located in Europe, I knew he had a relationship with Michael, and I called Hans-Joerg to ask if he thought Michael, A, would be interested, and B, would be good at this, and he arranged for Michael to come in Friday morning.

We did all we had to do -- it gets a bit complicated. I'm not sure if this is of interest to you. But he had some arrangements with Citi, and which I had to call Vikram and then he called the lawyer just to make sure that we could use him and it didn't compromise his -- I think he was in a separation agreement with them.

Q. I think I can -- just so we can move

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arrangements were made with respect to paying him?

A. He was paid. That was done by Rich. I'm not familiar.

I am remembering now, with apologies, I think we also had a team from CS, because we needed people to help us with a lot of the aspects of the due diligence. That was all reporting in through Rich. So there was a team from CS we had as well.

But Michael was clearly the lead strategic advisor who was working closely with Rich and Jerry and I.

Q. We were talking about the circle of the senior people, and was anyone from CS within that circle, or were they more of the troops you needed to do the due diligence you're talking about?

A. I think the latter.

Q. I had asked you about Klein's compensation. Do you know what the terms were at all?

A. No.

Q. Do you know, for example, if it was a flat fee or if there was any arrangement for a

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past that topic. Effectively, if I can shorthand this, he had some sort of noncompete or garden leave with Citi, and Vikram Pandit relieved him of that so he could help you?

A. And Vikram and I know each other quite well, so I was able to call Vikram.

Q. Was Mr. Klein at that point associated with any firm or --

A. No.

Q. He was a solo practitioner?

A. Yes.

Q. You know what --

A. There was some debate afterwards of whether Citi would get lead table credit for it. But other than that, no, it was Michael on his own, and I think the arrangement was specifically with him, and I think once the deal was done, there was an interest on Citi's part of getting lead table credit. Other than that, there was nothing from Citi.

Q. I am going to leave lead table credit.

A. So I think we are agreeing in substance it was Michael alone.

Q. And was Michael paid a fee or what

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bonus or reward on success?

A. Rich discussed that with him. I'm sure I was involved in approving it at the time. I don't have any recollection.

Q. When -- at this stage, late Friday night, you have had the meetings, you know, you've met Kirk, Donini and others and had the meeting with McDade, did you talk to any of those people, Kirk, Donini, McDade -- did you meet with Eric Felder, do you know?

A. I don't recall. I don't think so.

Q. You met with Kirk --

A. I think I met with -- is it Mike --

Q. Mike Gelband?

A. Yeah. I think Gelband was part of the group that was in the office. I don't think Felder was, but he might have been.

Again, every single person that we have mentioned, this is the first time I had met them. So it wasn't faces that I recognized.

Q. And it was the first time -- that includes McDade was the first time you met him? Yes?

A. Yes.

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. And when you spoke to Kirk and Donini</p> <p>3 and Gelband and McDade, Ajay and Shafir and</p> <p>4 whatever others, did you talk to them at that</p> <p>5 point on late Friday night about the possibility</p> <p>6 of coming to work for Barclays?</p> <p>7 MR. HUME: Objection, vague.</p> <p>8 A. I think that was the whole purpose we</p> <p>9 were there. But it was very much -- I would have</p> <p>10 said it differently. It was a possibility of</p> <p>11 combining the organizations. That implies they</p> <p>12 would come to work for Barclays.</p> <p>13 The reason we were there was to see if</p> <p>14 there was an opportunity to combine Barclays</p> <p>15 Capital and Lehman Brothers.</p> <p>16 Q. I guess I should follow up a little</p> <p>17 bit on whether on that Friday night there was any</p> <p>18 discussion about what the structure of the</p> <p>19 transaction would be. It winds up as an asset</p> <p>20 purchase agreement, right?</p> <p>21 MR. HUME: Objection, vague. Which</p> <p>22 transaction?</p> <p>23 Q. Let me break it down.</p> <p>24 Ultimately the deal that was done was</p> <p>25 done in the form of an asset purchase, correct?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know what that means.</p> <p>3 Q. It means you buy their stuff, you buy</p> <p>4 their property, as opposed to --</p> <p>5 A. I am happy to describe the deal we</p> <p>6 did.</p> <p>7 Q. OK.</p> <p>8 A. I am uncomfortable accepting your</p> <p>9 terminology.</p> <p>10 Q. Did you ever hear the deal described</p> <p>11 as an asset purchase agreement?</p> <p>12 A. Only when you just said it.</p> <p>13 Q. Did you have an understanding -- let's</p> <p>14 cut to the very end. When the deal got done and</p> <p>15 approved by the bankruptcy court, did you have an</p> <p>16 understanding of what the structure of the deal</p> <p>17 was?</p> <p>18 A. I'm very happy to tell you what I</p> <p>19 thought the structure was.</p> <p>20 Q. OK.</p> <p>21 A. If you want to ask that question, but</p> <p>22 your --</p> <p>23 Q. What was your understanding of the</p> <p>24 structure --</p> <p>25 A. I'm not comfortable in your</p>
Page 44	Page 45
<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 speculation.</p> <p>3 Q. OK. What was your understanding of</p> <p>4 the structure of the deal as approved by the</p> <p>5 bankruptcy court?</p> <p>6 A. Broadly speaking, because this was</p> <p>7 with the full authority from the board and John to</p> <p>8 meet to negotiate the details and the specifics,</p> <p>9 this was delegated to Rich, who I know you have</p> <p>10 had a chance to talk to, so I am giving you the</p> <p>11 general --</p> <p>12 Q. Sure.</p> <p>13 A. The structure was an opportunity for</p> <p>14 us to purchase the U.S. broker/dealer of Lehman</p> <p>15 Brothers.</p> <p>16 Q. That general description of the</p> <p>17 opportunity to purchase the U.S. broker/dealer of</p> <p>18 Lehman Brothers, did anyone take your time with or</p> <p>19 explain to you what the nuts and bolts of the</p> <p>20 transaction were in terms of the structure?</p> <p>21 MR. HUME: I will object to the extent</p> <p>22 that question would require the witness to</p> <p>23 divulge conversations with counsel going</p> <p>24 through the agreement. I would instruct the</p> <p>25 witness not to answer on privilege.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. That's fair. Outside the presence of</p> <p>3 any lawyers or counsel giving legal advice, did</p> <p>4 you have a discussion with anyone about what the</p> <p>5 nuts and bolts of the structure were?</p> <p>6 A. I don't think there were any nuts or</p> <p>7 bolts in there. I don't know what "nuts and</p> <p>8 bolts" means.</p> <p>9 MR. GAFFEY: Can I have Exhibit I,</p> <p>10 please.</p> <p>11 Q. Let me show you what has previously</p> <p>12 been marked, Mr. Diamond, as Exhibit I. Have you</p> <p>13 ever seen that document before?</p> <p>14 Let me rephrase the question.</p> <p>15 A. Should I read the whole thing?</p> <p>16 Because I can't answer it unless I read the whole</p> <p>17 thing.</p> <p>18 Q. Take a look at it sufficient to tell</p> <p>19 me whether you have ever seen it before. I don't</p> <p>20 need you to read it word for word, but read it</p> <p>21 sufficiently to tell me whether you have ever seen</p> <p>22 that document before.</p> <p>23 A. My memory is that this was the -- I</p> <p>24 can't be sure, but my memory is that this is the</p> <p>25 document that was the responsibility of Rich to</p>

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 execute. So I don't have any specific  
3 recollections.  
4 Q. Do you have a general recollection  
5 that a contract like this was signed on or about  
6 September 16th? That's the Tuesday.  
7 A. That's a very general statement. Do I  
8 have a recollection that we made an agreement  
9 pending approval of the bankruptcy court on  
10 Tuesday --  
11 Q. Let me back it up a little bit.  
12 A. I would like to finish actually. I  
13 prefer not to be interrupted.  
14 Tuesday the 16th, yes.  
15 Q. Do you recall if the agreement that  
16 was made pending approval of the bankruptcy court  
17 was in writing?  
18 MR. HUME: Objection, vague.  
19 MR. GAFFEY: Let me just probe the  
20 objection a little bit. I want to make sure  
21 I have a clear question here. What's vague  
22 about that question?  
23 MR. HUME: Which agreement are you  
24 talking about? This, the agreements later  
25 in the week?

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 me.  
3 Q. At the time the negotiations were  
4 going on and at the time the deal was submitted to  
5 the bankruptcy court for approval, as a general  
6 matter, do you have a recollection of anybody  
7 showing you the deal documents?  
8 A. Again, that was the responsibility of  
9 Rich to execute.  
10 Q. Did anybody show you the deal  
11 documents?  
12 MR. HUME: Objection.  
13 To the extent it calls for any meeting  
14 with counsel or communication with counsel,  
15 we would instruct you not to answer on  
16 privilege grounds.  
17 MR. GAFFEY: As to whether anybody  
18 showed it to him? That's the basis of a  
19 privilege objection?  
20 MR. HUME: You may be asking about a  
21 meeting with counsel.  
22 MR. GAFFEY: It might be, but the verb  
23 is, did anybody "show" you. Do you think  
24 showing the agreement is a privileged act?  
25 I just want to know so I understand the

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. The agreement that's right there in  
3 front of you, sir, that we have been talking about  
4 for the last five or ten minutes marked Deposition  
5 Exhibit 1, is that the agreement in writing that  
6 reflects the agreement you just described to me?  
7 A. I think you would have to ask Rich  
8 that.  
9 Q. Do you know?  
10 A. I would consult with Rich.  
11 Q. Do you have any knowledge of your own  
12 sufficient to answer that question?  
13 MR. HUME: Objection, asked and  
14 answered.  
15 A. I am happy with my answer.  
16 Q. I'm not. I don't think it is  
17 responsive.  
18 I have asked you if you have any  
19 independent knowledge about that document. You  
20 told me who you would have to ask. I am asking if  
21 you have any knowledge independent of the  
22 conversation you say you would have to have.  
23 A. If this is the document that is the  
24 record of the agreement on the 16th, it would have  
25 been executed and the responsibility of Rich, not

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 privilege you are asserting.  
3 MR. HUME: Whether he had a  
4 communication with counsel about the  
5 document.  
6 Q. I don't want to know any words anybody  
7 said. I just want to know if at any point while  
8 the deal was being negotiated, anybody showed you  
9 the document marked as Deposition Exhibit 1.  
10 A. I think I answered. This was Rich's  
11 responsibility and I wasn't involved in the  
12 execution of this document. You are asking me to  
13 speculate and I can't speculate.  
14 Q. That's -- maybe we are missing each  
15 other here. When you say it was Rich's  
16 responsibility, does that mean you don't have a  
17 recollection of being involved with it?  
18 A. I don't think that's what you asked  
19 me. You asked me if I had seen it.  
20 Q. OK, that's still my question.  
21 Whoever's responsibility it was to execute it, did  
22 you see it at or around the time that it is dated,  
23 September 16?  
24 A. So did I see this document on the  
25 16th?

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. At or around the 16th, yeah.</p> <p>3 A. It is unlikely, but it is possible. I</p> <p>4 can't, I can't recall everything that I would have</p> <p>5 seen that day.</p> <p>6 Q. No, that's --</p> <p>7 A. Since this was a delegated</p> <p>8 responsibility to Rich, I sense that it is</p> <p>9 unlikely that I would have seen the document in</p> <p>10 full.</p> <p>11 Q. Mr. Diamond, I am putting before you</p> <p>12 what we have previously marked as Deposition</p> <p>13 Exhibits 24 and 25. Again, sir, I would ask you</p> <p>14 to take a look through the documents sufficiently</p> <p>15 to tell me whether you have seen them before.</p> <p>16 Have you had a chance to go through</p> <p>17 Exhibit 25?</p> <p>18 A. I have.</p> <p>19 Q. Have you seen that document before?</p> <p>20 A. I would give you the same answer I</p> <p>21 gave before, which is the document agreement --</p> <p>22 document preparation was delegated to Rich and his</p> <p>23 team, and it is possible someone showed me this,</p> <p>24 but I have no recollection.</p> <p>25 Q. Have you ever heard the term</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 "clarification letter" used in connection with the</p> <p>3 transaction?</p> <p>4 A. I may have, but I don't recall.</p> <p>5 Q. And if you take a look, sir, at</p> <p>6 Exhibit -- the first amendment, which I think is</p> <p>7 Exhibit 23, have you seen that before? Exhibit</p> <p>8 24, sir. Take a look at that, please, and tell me</p> <p>9 if you have seen it before.</p> <p>10 A. The question is have I seen this</p> <p>11 before?</p> <p>12 Q. Yes, sir.</p> <p>13 A. I think the answer is the same, which</p> <p>14 is that the negotiation and discussion around</p> <p>15 all -- I don't mean to pick on words, but the</p> <p>16 agreement preparation was a responsibility of</p> <p>17 Rich, so I have no specific recollection.</p> <p>18 MR. GAFFEY: Can we take a five-minute</p> <p>19 break.</p> <p>20 MR. HUME: Sure.</p> <p>21 (Recess)</p> <p>22 BY MR. GAFFEY:</p> <p>23 Q. Mr. Diamond, I would like to go back</p> <p>24 to the Friday night period we were talking about,</p> <p>25 sometime between 8 and 11.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 I think you told me that it was</p> <p>3 important, that you wanted to do the due diligence</p> <p>4 yourselves, as a general matter. Did you get the</p> <p>5 opportunity to perform -- withdrawn.</p> <p>6 Did your team get the opportunity to</p> <p>7 perform the due diligence that you wanted to do?</p> <p>8 MR. HUME: I am going to object as</p> <p>9 vague and ambiguous.</p> <p>10 A. What I don't know what you are saying</p> <p>11 is, in total or Friday night? What are you</p> <p>12 asking?</p> <p>13 Q. I am sort of at a higher level.</p> <p>14 A. We began to get the documents we</p> <p>15 needed on Friday. We didn't before that.</p> <p>16 Q. Just to sort of set the framework and</p> <p>17 see how much I have to ask you, can you give me a</p> <p>18 sense of what you know about the due diligence</p> <p>19 process, if anything, that started on Friday and</p> <p>20 occurred through the weekend?</p> <p>21 A. Yeah, that's a great question.</p> <p>22 The quality of information from Lehman</p> <p>23 and their clearing banks changed continually. Was</p> <p>24 that Lehman being out of control? Was it poor</p> <p>25 recordkeeping? Was it their clearing bank being</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 underhanded? Was it, as Chairman Bernanke had</p> <p>3 said, the beginning of the riskiest time in the</p> <p>4 history of the financial markets so that certainty</p> <p>5 of values was never less -- uncertainty of values</p> <p>6 was never greater? I think all those things had</p> <p>7 to be considered in whether or not and how we were</p> <p>8 able to propose a deal.</p> <p>9 So I think, just to repeat, your</p> <p>10 question is an excellent one, which was, how did</p> <p>11 we feel about the due diligence process and how</p> <p>12 did we feel about the environment we were doing</p> <p>13 due diligence in.</p> <p>14 I just finished the book by David</p> <p>15 Wessel, In The Fed We Trust, which just came out</p> <p>16 and was on the best seller list. It is a great</p> <p>17 book. And it quotes Chairman Bernanke as saying</p> <p>18 that this period was the riskiest he had ever</p> <p>19 seen, and he did a lot of work on the Great</p> <p>20 Depression, as you know. The stress was never</p> <p>21 higher, the uncertainty was never higher, the risk</p> <p>22 in the markets was never higher.</p> <p>23 The only other person who had an</p> <p>24 opportunity to bid for Lehman Brothers had walked</p> <p>25 away in Bank of America, someone who was prepared</p>

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 to pay 50 billion for Merrill Lynch and couldn't  
3 put a price on this.

4 So we knew we were operating in an  
5 environment of incredible uncertainty, very poor  
6 data and records, and it was very stressful as a  
7 result of that.

8 Q. My question was more along the lines  
9 of, did you get to look at anything?

10 A. I think I answered your question  
11 actually. If you have another one, I would be  
12 happy to answer it. I think I answered your  
13 question.

14 Q. Did you look at the books?

15 A. Is that another question?

16 Q. Did you get to look at the books?

17 A. Is this a follow-on question?

18 Q. Just answer my question. Did your  
19 people get to look at the books?

20 A. Is it a follow-on question or the same  
21 one?

22 Q. It is just a question, sir.

23 A. I don't know what "books" means.

24 Q. Did you get to look -- did your people  
25 get to look at the books and records of Lehman

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. Describe for me, if you would, the  
3 process of looking at a lot of information. Who  
4 was involved? Where were they?

5 A. Can you be more specific?

6 Q. Well, you didn't yourself open up the  
7 books and ledgers of Lehman and review them,  
8 right? People did that at your direction?

9 A. What's the question?

10 Q. The one I just asked you. Would you  
11 like it read back?

12 A. Yeah.

13 MR. GAFFEY: Read it back.

14 (Record read)

15 A. At various times I was very involved  
16 in specific looks. I was not responsible. That  
17 was a function that was run by Rich Ricci. My  
18 interest in understanding the gaps, the  
19 inconsistencies was high, but I did not run the  
20 process, you're correct.

21 Q. And who, if anyone -- who reported to  
22 you about the -- this due diligence process? Was  
23 it Ricci who was keeping you up to date?

24 A. As I just said, I delegated that to  
25 Rich Ricci, and as a direct report to me, he kept

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2 Brothers?

3 A. I think I just answered that.

4 Q. I don't think you did. Did your  
5 people get to look at the books and records of  
6 Lehman Brothers?

7 MR. HUME: I think the witness did  
8 answer the question.

9 A. I think we looked at information in an  
10 environment where in the history of the financial  
11 markets it has never been more difficult to assign  
12 value, where there were clearly data errors coming  
13 out of Lehman, misinformation coming out of  
14 Lehman, lack of information coming out of Lehman.  
15 Whether or not that was their finance function  
16 being out of control, something happening from  
17 their clearing bank or other clearing agencies,  
18 those are all the facts. There was huge gaps in  
19 information. Massive gaps in information, in an  
20 environment which Chairman Bernanke has said is  
21 the most stressful, high-risk environment that  
22 anyone could deal in.

23 In that context, we looked at a lot of  
24 information. There were significant gaps and  
25 there was information that wasn't accurate.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 me informed.

3 Q. And did Mr. Ricci discuss with you,  
4 when he made those direct reports, what, if  
5 anything, he was -- he and his team were finding  
6 out about the book value at which Lehman carried  
7 its assets?

8 A. How are you using the phrase "book  
9 value"?

10 Q. Did he use the phrase?

11 A. No. You just used it.

12 Q. Withdrawn.

13 A. Can you tell me what --

14 Q. Sir, I don't mean to be rude. The way  
15 this works is I ask the questions.

16 MR. HUME: He understands that.

17 A. You used a phrase that I don't  
18 understand. I can ask you how you define that  
19 phrase.

20 Q. I will just rephrase the question.

21 A. If there is a rule against that, let's  
22 get it on the table.

23 Q. I'll rephrase the question.

24 When Mr. Ricci reported to you about  
25 this due diligence project, did he use the phrase



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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 "book value"?</p> <p>3 A. I think it would be very unusual for</p> <p>4 me to recall specific terms that were used. I</p> <p>5 have absolutely no recollection of specific terms</p> <p>6 that were used.</p> <p>7 Q. Let's cut again to the Tuesday when an</p> <p>8 agreement is made, Tuesday, the 16th. Did</p> <p>9 Barclays agree to buy assets from Lehman at the</p> <p>10 book value as of September 16?</p> <p>11 A. Can you tell me how you define "book</p> <p>12 value"?</p> <p>13 Q. I don't have a definition, sir. I am</p> <p>14 asking if that's the nature of the agreement that</p> <p>15 was made. Did Barclays agree to buy assets --</p> <p>16 A. I can tell you what we did, which was,</p> <p>17 we had a very clear mandate and agreement with our</p> <p>18 board that notwithstanding the incredible</p> <p>19 uncertainties, the incredible lack of information,</p> <p>20 the environment that as Chairman Bernanke has been</p> <p>21 quoted recently as saying it was the highest risk,</p> <p>22 most stressful, most difficult to value</p> <p>23 environment he had ever worked in, we structured a</p> <p>24 deal that with the mandate of our board would be</p> <p>25 capital accreted and included groups of assets and</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 groups of liabilities. End of story.</p> <p>3 It was a very difficult environment to</p> <p>4 have certainty.</p> <p>5 Q. Was among the things that Barclays</p> <p>6 agreed to purchase on September 16th a long</p> <p>7 position of securities at book value as of</p> <p>8 September 16th?</p> <p>9 MR. HUME: Objection, asked and</p> <p>10 answered.</p> <p>11 Q. You can answer it.</p> <p>12 A. In an environment that was -- I'm sure</p> <p>13 you recall, in the years since the Great</p> <p>14 Depression, I don't think we have been through a</p> <p>15 period -- Chairman Bernanke was quoted on this --</p> <p>16 that had greater risk, less certainty around</p> <p>17 values, more stress, that put the global economy</p> <p>18 at risk.</p> <p>19 Where the data coming from Lehman</p> <p>20 Brothers was uncertain, had huge gaps, was</p> <p>21 constantly changing, we made a -- where our board</p> <p>22 was clear that within all those parameters, we</p> <p>23 still had to assure them as best we could that any</p> <p>24 agreement would be accretive to capital.</p> <p>25 You probably recall that in this</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 period, capital was a big issue for the banks and</p> <p>3 for the regulators, and within a little over a</p> <p>4 month from this time, we had to agree to a capital</p> <p>5 plan with our regulator that led to almost 7</p> <p>6 billion pounds of additional capital being raised</p> <p>7 in the Middle East. So doing a transaction that</p> <p>8 was accretive to capital was very, very important</p> <p>9 to our board and was a strong instruction to me.</p> <p>10 Notwithstanding that, it was very</p> <p>11 difficult to value the group of assets and the</p> <p>12 group of liabilities that we agreed on, and more</p> <p>13 than telling you that we agreed on a group of</p> <p>14 assets or discussed a group of assets and a group</p> <p>15 of liabilities, any -- that is how we -- that is</p> <p>16 how we managed this, with clarity around the fact</p> <p>17 that, again, with all the risks and nothing could</p> <p>18 be guaranteed, being capital accretive was</p> <p>19 important.</p> <p>20 I hope that's helpful.</p> <p>21 Q. Could you take a look at Deposition</p> <p>22 Exhibit 1, please. Would you turn to page 6 of</p> <p>23 it.</p> <p>24 I would ask you, Mr. Diamond, take a</p> <p>25 look, if you would -- this is the definition</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 section of that document. Take a look at the</p> <p>3 definition of "purchased assets." Do you see</p> <p>4 where I am on the page?</p> <p>5 A. No, sir.</p> <p>6 Q. No, you don't, or --</p> <p>7 A. Yeah, about halfway down?</p> <p>8 Q. Yes.</p> <p>9 Scan through it as much as you need</p> <p>10 to, to familiarize yourself with it, but my</p> <p>11 question will go to Subsection D, so that's what I</p> <p>12 would ask you to focus on.</p> <p>13 Have you had a chance to look through</p> <p>14 definition Subsection D? And you see it</p> <p>15 describes -- I'm quoting -- "Government</p> <p>16 securities, commercial paper, corporate debt,</p> <p>17 corporate equity, exchange traded derivatives and</p> <p>18 collateralized short-term agreements with a book</p> <p>19 value as of the date hereof of approximately</p> <p>20 70 billion collectively long positions."</p> <p>21 Does that accurately describe assets</p> <p>22 that Barclays agreed to buy from Lehman?</p> <p>23 A. The agreement that Barclays made was</p> <p>24 that we would take a group of assets and a group</p> <p>25 of liabilities with the -- with an additional and</p>

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2 important commitment to our board that  
3 notwithstanding all the risk associated with this,  
4 and the difficult valuations, it would be capital  
5 accretive.

6 I'll stick to that answer rather than  
7 try and do anything else.

8 Q. Well, my question doesn't go -- I will  
9 ask you, and I will spend some time on it today,  
10 what it was you spoke to your board about, but my  
11 question goes to what agreement Barclays made with  
12 Lehman.

13 A. I think I have said to you that the  
14 document here was the responsibility of Rich. I  
15 think you had an opportunity to do his deposition.

16 I can tell you what the agreement that  
17 I was involved in discussing was, which I just  
18 did.

19 Q. OK. Was the agreement that you were  
20 involved in discussing, did it include the  
21 purchase of government securities, commercial  
22 paper, corporate debt, corporate equity, exchange  
23 traded derivatives and collateralized short-term  
24 agreements with a book value as of September 16th  
25 of approximately 70 billion dollars?

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2 MR. HUME: Objection, misstates the  
3 testimony and lack of foundation.

4 A. The transaction that we were agreeing  
5 to at all steps and every step in a very clear  
6 way, notwithstanding all the risks,  
7 notwithstanding all the valuation difficulties,  
8 notwithstanding all the holes in data, capital  
9 accretion was a condition that was very important  
10 to agreeing to a deal for our board and giving us  
11 the authority.

12 I was not a part of the specific  
13 meeting that you are referring to.

14 Q. As a general matter -- I know you  
15 didn't talk to the judge, but did it come to your  
16 attention whether or not the bankruptcy court was  
17 told it was a condition of the deal that it be  
18 capital accretive?

19 MR. HUME: Objection, asked and  
20 answered.

21 MR. GAFFEY: Asked.

22 Q. You can answer the question, sir.

23 A. I did.

24 Q. Respectfully, sir, I don't think you  
25 did.

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2 A. The -- there was a group of assets and  
3 a group of liabilities, and there was the  
4 condition that notwithstanding the risk in the  
5 markets and the difficult valuations in the  
6 markets, that at the end of this we had a  
7 commitment that to the best of our ability --  
8 again, nothing could be guaranteed -- that it  
9 would be capital accretive.

10 Q. Do you have any knowledge, sir, as to  
11 whether the bankruptcy court was informed in any  
12 way that it was a condition of the agreement that  
13 notwithstanding the risk in the markets and  
14 difficult valuations in the markets, that at the  
15 end, this had to be a commitment that to the best  
16 of your ability would be capital accretive? Was  
17 that told to the bankruptcy court?

18 MR. HUME: Objection, lacks  
19 foundation.

20 Q. You can answer.

21 A. I wasn't at that session.

22 Q. Did you ever learn if the bankruptcy  
23 court was told that it was a condition to the deal  
24 that it had to be capital accretive to Barclays?  
25 Other than from lawyers?

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2 Do you know if the bankruptcy court  
3 was told it was a condition of the deal that it  
4 had to be capital accretive to Barclays?

5 A. I'll take one more shot.

6 Q. I will take as many as it takes, sir.

7 A. I was not at the meeting.

8 Q. You were not at the meeting with the  
9 judge? Is that what you mean when you say --

10 A. What meeting are you referring to?

11 Q. Sir, you're telling me you weren't at  
12 the meeting. What meeting are you telling me you  
13 weren't at?

14 A. What meeting did you just ask me?

15 Q. Sir, in any way, in sum or essence --

16 A. I am trying to help you, so I don't  
17 know why you are laughing and doing all the  
18 shenanigans. If you can ask the question  
19 straight, I will give you a straight answer. But  
20 you don't need all the drama.

21 Q. I think you can leave it to your  
22 lawyer to suggest whether I am laughing or not. I  
23 am actually not laughing, sir. This is a very  
24 serious matter.

25 My question is whether the bankruptcy

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 judge who approved this deal was told it was a</p> <p>3 condition of the deal that it would be capital</p> <p>4 accretive to Barclays. Do you have any knowledge</p> <p>5 about that one way or the other?</p> <p>6 MR. HUME: I object to the use of the</p> <p>7 word "condition" as vague and ambiguous, and</p> <p>8 I object because the question has been asked</p> <p>9 and answered.</p> <p>10 Q. You can answer the question, sir.</p> <p>11 A. I was not present at any discussions</p> <p>12 personally.</p> <p>13 Q. Did you ever learn indirectly whether</p> <p>14 the bankruptcy court was told it was a condition</p> <p>15 to the deal that it be capital accretive to</p> <p>16 Barclays?</p> <p>17 A. The condition to the deal from the</p> <p>18 beginning was capital accretion. I have explained</p> <p>19 this many times.</p> <p>20 Q. Did you ever learn indirectly whether</p> <p>21 the bankruptcy court was told, whether Judge Peck</p> <p>22 was told about that condition to the deal?</p> <p>23 A. I never had a discussion with Judge</p> <p>24 Peck.</p> <p>25 Q. Did anyone ever relay to you any</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 report of the hearings that took place before</p> <p>3 Judge Peck? Just answer that yes or no.</p> <p>4 MR. HUME: Objection. Can I just</p> <p>5 object.</p> <p>6 To the extent it calls for any</p> <p>7 discussion with counsel, we instruct you not</p> <p>8 to answer. So any discussions about the</p> <p>9 hearing with someone other than counsel is</p> <p>10 what you are asking, what the question is.</p> <p>11 A. In a summary way, not a detailed way</p> <p>12 certainly.</p> <p>13 Q. And in is summary way, when you had</p> <p>14 these summary descriptions, did you learn one way</p> <p>15 or the other whether Judge Peck was told that it</p> <p>16 was a condition to the deal that it be capital</p> <p>17 accretive to Barclays?</p> <p>18 MR. HUME: Objection. I think the use</p> <p>19 of the word "condition" in these questions</p> <p>20 is highly ambiguous. The witness has</p> <p>21 testified that it was an intenal condition.</p> <p>22 He didn't testify to anything beyond that.</p> <p>23 Q. Could you answer the question,</p> <p>24 Mr. Diamond?</p> <p>25 A. I think I have been very, very clear</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 with you that the agreement was the responsibility</p> <p>3 of Rich, and that I wasn't at the bankruptcy</p> <p>4 proceedings here. You are asking me something</p> <p>5 that I -- you are asking me about a conversation</p> <p>6 where I wasn't there.</p> <p>7 Q. Is the answer that you don't know one</p> <p>8 way or the other directly or indirectly?</p> <p>9 A. I think I have answered the question.</p> <p>10 I will stand by my answer.</p> <p>11 Q. Did you -- were you personally engaged</p> <p>12 in any of the negotiations with personnel at</p> <p>13 Lehman about the deal?</p> <p>14 A. Rich ran the deal. I didn't run it.</p> <p>15 Q. Did you have -- you yourself have</p> <p>16 conversations with any personnel at Lehman in</p> <p>17 negotiating the deal?</p> <p>18 A. It is a very good question. I can't</p> <p>19 think of any situation where I was part of the</p> <p>20 specific negotiations, because I had delegated</p> <p>21 that to Rich and it would be my style not to then</p> <p>22 try and get it confused.</p> <p>23 And I have absolutely no recollection</p> <p>24 of having been involved in specific negotiations</p> <p>25 myself.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Were you present in New York over the</p> <p>3 weekend of the 13th and the 14th? That's the</p> <p>4 Saturday and Sunday before the bankruptcy filing.</p> <p>5 A. Yes.</p> <p>6 Q. Were you present in New York on the</p> <p>7 15th and the 16th? Actually rather than drag this</p> <p>8 out, sir, did you stay in New York the whole week?</p> <p>9 A. I'm pretty sure -- I am trying to</p> <p>10 think. I was certainly there through the 16th,</p> <p>11 and I'm pretty sure I stayed the whole week.</p> <p>12 Q. And you had delegated to Mr. Ricci the</p> <p>13 task, the responsibility for negotiating the terms</p> <p>14 of the agreement. What were you doing during that</p> <p>15 week?</p> <p>16 A. Among other things.</p> <p>17 Q. Among other things.</p> <p>18 What were you doing, if anything, in</p> <p>19 connection with the transaction during that week?</p> <p>20 A. The week you are referring to is the</p> <p>21 week of the 15th?</p> <p>22 Q. Correct, sir. Well, let's include the</p> <p>23 13th, 14th, through, say, Friday, the 19th. I</p> <p>24 have to have the weekend in there because that's</p> <p>25 when the due diligence was going on.</p>

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2 A. What was I doing?

3 Q. What were you doing in connection with

4 the deal from Saturday, the 13th, through Friday,

5 the 19th, if anything?

6 MR. HUME: Object to the vagueness of

7 the question.

8 A. Wow. I'm doing my job.

9 Q. In connection with the deal. That is

10 sort of why I asked that. I know you have a big

11 job, and I know you have a lot of things to do.

12 What are you doing in connection with this

13 transaction?

14 A. There was very many discussions with

15 the Barclays group, our CEO, the executive

16 committee and the board to keep them abreast. And

17 there were many internal meetings to review the

18 results of different valuations, as specious as

19 they were.

20 There was many -- so I was quite

21 active. And that's the reason I was -- I would

22 say that between Thursday and Tuesday or

23 Wednesday, I'm not sure I got more than an hour or

24 two of sleep on any given time, and that's one of

25 the reasons that I asked Rich to take full

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2 Monday and Tuesday, Bart would have been probably

3 my primary contact.

4 And then at the senior level, I

5 engaged with people, as I've said, people like

6 Jerry Donini to learn more about the equities

7 business, find out more about would he want to

8 join, what does he think about Barclays, how does

9 he feel the combination works.

10 Bart and I visited thousands of people

11 on Tuesday to tell them about the opportunity

12 pending bankruptcy approval. There was 10,000

13 jobs that were at risk. I don't know if you know

14 this, but when we announced this deal on Tuesday,

15 there were 10,000 people, many of whom were very

16 low salaried, many of whom had worked at Lehman

17 for 20 or 30 years, that were losing their

18 pensions, going to get no severance, no

19 healthcare. Many main breadwinners were going to

20 go home -- had gone home Monday, were going to go

21 home any day, with all of that gone, a dramatic

22 change to their lives.

23 So when I spent Tuesday with thousands

24 of the employees, the emotion, the tears, the --

25 it took a lot to manage, and that was a lot of

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2 responsibility for negotiating the agreement

3 within the authority that we were given from the

4 board to John, John to me and me to Rich. Some of

5 that a little bit more collectively than it

6 sounds, it wasn't quite that big a channel.

7 But I probably never had a busier

8 period in my career.

9 Q. What I am hearing you describe, sir,

10 if I'm understanding correctly, is what is -- I'd

11 use the word "internal." You were reporting to

12 the board and keeping the board abreast of the

13 situation and you were talking to your team. Let

14 me shift the focus a little bit.

15 Again, over the same time period from

16 the Saturday, the 13th, through Friday, the 19th,

17 what, if any, contact were you having with the

18 Lehman folks, you yourself?

19 MR. HUME: Objection. I think you

20 asked that already.

21 A. It varied during the week. So, you

22 know, you asked -- on the 13th and the 14th, it

23 was primarily through Bart McDade, who had been

24 given responsibility to try and find a

25 transaction, which ended up in bankruptcy. And

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2 Tuesday and Wednesday, in groups, large groups and

3 small groups, the emotion.

4 I also spent time with many people,

5 such as Mayor Bloomberg and others, who were very

6 interested in the opportunity to save jobs for

7 New York.

8 There was preparation of

9 communications. And specifically with the Lehman

10 people, I was doing a lot of things, but certainly

11 not trying to intrude on the actual specific

12 negotiations and documentation of the agreement.

13 Q. Let's talk a little bit about the

14 saving jobs piece. Did you offer Mr. McDade a

15 job?

16 A. I would say it slightly differently,

17 but I'm happy to get pushed back on if you don't

18 understand the context.

19 I definitely wanted Bart to stay, and

20 I wanted him to engage with me about what the best

21 role would be. I think one of the difficult

22 things for Bart was I had a very strong executive

23 committee and I was the head of the business, so

24 trying to find exactly the right role rather, than

25 me say here is the job.

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2 So I didn't say here is the job, but I  
3 said, I would love you to do this, I'd love you to  
4 do this, I'd love you to do this. There is a  
5 series of things. Actually I never got to a  
6 specific, but let's engage, I want you to stay.  
7 Q. Without regard to the particulars of  
8 what he would do, what his title would be, what  
9 his specific portfolio would be, did you talk to  
10 him about how much he would be paid if he took  
11 such a job?  
12 A. I had a discussion with him -- I have  
13 to give this some thought because so many of these  
14 conversations were without sleep.  
15 It was important to us that if we are  
16 going to do this deal and announce it on Tuesday,  
17 that we had a certainty that the senior team was  
18 engaged and going to be a part of it as opposed to  
19 go to someone else.  
20 We had a situation, for example, I  
21 think it was Mark Shafir -- I know it is a name I  
22 used earlier. It is the same guy. If I had the  
23 wrong name, then I have it wrong now. He was the  
24 cohead of M&A who had told us, when we tried to  
25 engage him, he was one of the people, that he was

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2 It is very possible that our HR people  
3 would have followed up and made sure we had all  
4 those signed, but it was a pretty crazy time.  
5 Q. Do you recall a communication that you  
6 made to Michael Evans in which you told him to  
7 prepare a written offer and just give it to you?  
8 A. I'm sorry?  
9 Q. Do you recall a communication between  
10 you and Michael Evans -- Michael Evans is head of  
11 HR, right?  
12 A. Right.  
13 Q. Do you recall a communication between  
14 you and Michael Evans in which you instructed  
15 Evans to provide a written offer for McDade but  
16 send it just to you, not to send it directly to  
17 Mr. McDade?  
18 A. I recall asking Michael to get me some  
19 background on what Bart had earned in the past,  
20 and I might have said that. I certainly would  
21 have wanted to see it before he gave it to Bart,  
22 so it is not crazy, but I don't recall  
23 specifically.  
24 I remember being interested more in  
25 what was his comp history so I could help get

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2 actually going to leave and go to Citigroup.  
3 So you can imagine if we were going to  
4 put Barclays at risk and our shareholders at risk  
5 in an environment with so much risk and so much  
6 uncertainty and so much stress and so difficult to  
7 value, that if the senior team wasn't in place, we  
8 were not going to do this deal.  
9 When I discussed that with Bart, and  
10 part of that discussion is an agreement of what  
11 the compensation would be, he said he was on  
12 board, he would see this through, but he didn't  
13 need a discussion on compensation.  
14 Q. Was a -- if you remember, was a  
15 written offer of employment put together for  
16 Mr. McDade?  
17 A. I can't recall. I think in most of  
18 the discussions we were certainly planning on  
19 having written agreements. That was the intent.  
20 And I had a couple of those meetings. Whether or  
21 not we actually followed up and had a signed  
22 agreement with Bart, I don't recall. I do  
23 remember him saying he doesn't need a signed  
24 agreement, that his handshake would be good  
25 enough.

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2 myself prepared for what -- I mean that's one of  
3 the inputs that one would want.  
4 Q. Sure. I'll come back to that later  
5 with some documents. I don't want to take time  
6 with that now.  
7 A. It could have been something like  
8 that. I'm sure if I was doing something with  
9 Bart, I would have wanted to see it with Michael  
10 first.  
11 Q. I have some -- I don't want to take  
12 time with it now. I have some documents I will  
13 show you that might refresh your recollection a  
14 little more precisely.  
15 Apart from conversations with McDade,  
16 did you -- did you talk to any of the other senior  
17 executives, Lehman executives, along these lines,  
18 about what they --  
19 A. Oh, boy. I think there were -- sorry,  
20 I jumped ahead.  
21 Q. Along the same lines.  
22 A. My recollection is that there were  
23 eight or nine people that we wanted to get  
24 agreement with before we would go through with the  
25 deal, and there was a larger group that they were

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2 committing to that they would insure we would  
3 engage with.

4 So I was part of our management team  
5 that had some of those discussions, and my  
6 recollection is it would have been deep into the  
7 morning, maybe late Monday night and deep into  
8 Tuesday morning.

9 And I definitely had a conversation  
10 with Bart. I definitely had a conversation with  
11 Skip. I think I was part of the Alex Kirk  
12 conversation, and I think there were a couple of  
13 people where I might not have been the key  
14 conversation but I might have said, how did it go,  
15 let me catch up with you.

16 But my memory -- and this -- I am  
17 telling you it is hazy, so I don't mean to skip  
18 over anything, but I think my responsibility  
19 amongst our senior team was to have the  
20 conversation about kind of signing on with Bart  
21 and with Skip, and I think I was additive on Alex.

22 Q. Alex is Alex Kirk?

23 A. Alex Kirk. And it's possible I was in  
24 on one or two others, but I don't recall. I think  
25 it was eight or nine in total.

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2 the conversation with Donini, but I don't think  
3 so. I definitely had a follow-up with him. He  
4 was someone we were very, very interested in  
5 making sure he was on the team and engaged. The  
6 equity business was such a key part of whether  
7 this would create value.

8 Q. Now, again sort of to frame what I  
9 want to follow up on, I want to focus now on the  
10 point at which an agreement is reached. Forget --  
11 and I don't mean document. I mean when in your  
12 mind there is an agreement with Lehman.

13 When do you first -- when is it first  
14 your understanding that an agreement has been  
15 reached between Barclays and Lehman?

16 A. My recollection of time, if I go  
17 backwards, is I had John Varley's approval to say  
18 publicly to the Lehman people, I think it was mid  
19 to late afternoon Tuesday, and so we only would  
20 have done that if we had had the agreement. So if  
21 I am trying to put a pin in it, it would have been  
22 early afternoon Tuesday.

23 Q. Is there any event that would help you  
24 put a pin in it? A conversation that you had --  
25 I'm not looking for an eureka moment, but where

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2 Q. Recognizing it is hazy, I will just  
3 use your phrase "in on," and we both agree that is  
4 a vague term, but were you in on or involved in  
5 connection with such conversations with Paolo  
6 Tonucci?

7 A. Who?

8 Q. Paolo Tonucci?

9 A. I don't recognize the name.

10 Q. Ian Lowitt?

11 A. No.

12 Q. Martin Kelly?

13 A. I don't know the name.

14 Q. Gerard Reilly?

15 A. I don't know the name.

16 Q. Did you talk to Donini along these  
17 lines?

18 A. I don't think it was me. I think that  
19 was Jerry del Missier. I can't be sure. It's  
20 possible I did Donini. It's possible. In fact, I  
21 think Jerry might have been in Europe by this  
22 time, because we were dealing with the whole issue  
23 of Lehman Europe at the same time. Jerry del  
24 Missier.

25 It is possible I'm the one that had

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2 you knew --

3 A. If I knew it, I would say it.

4 Q. Well, I have to ask you. How precise  
5 can you be about at what point in the day on  
6 Tuesday? Was it after lunch? Was it before  
7 lunch? Was it at lunch?

8 A. Early afternoon would suggest after  
9 lunch, but I am not precise. It would be -- there  
10 was a real concern that every minute that went by,  
11 the business was atrophied.

12 It was incredibly helpful that we had  
13 confirmation, I think that day or earlier, that  
14 the bankruptcy judge could judge possibly as early  
15 as Friday. I think it was that day. We didn't  
16 believe that if we didn't have -- we didn't  
17 believe we could go much beyond Monday, because  
18 clients weren't doing business, people were going  
19 home. So it was that kind of thing.

20 That leads me to believe that I would  
21 have been announcing it to the floor as soon after  
22 getting the agreement as possible. I don't know  
23 why I would have wasted time. The only reason  
24 would have been to make sure we had all our ducks  
25 in order with the board and the group, and by that

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2 time the conversations with John were all set up  
3 so they were pretty snappy.  
4 It's possible you could show me  
5 something that would make it more -- but I'm  
6 pretty sure that would have been the time frame.  
7 Q. As best you can, sir, and we will  
8 spend more time on this today, what's your --  
9 outline for me, please, the deal that was made.  
10 What were the components of the deal?  
11 MR. HUME: Objection, vague.  
12 A. Sorry.  
13 Q. You can answer.  
14 A. The question is what was the deal?  
15 Q. What were the components of the deal  
16 in your mind?  
17 A. We were acquiring the U.S.  
18 broker/dealer operation of Lehman Brothers with  
19 commitments from, as discussed, people, and a  
20 group of assets and a group of liabilities, which  
21 notwithstanding the uncertainty in valuations,  
22 notwithstanding the uncertainty in information and  
23 the gaps, notwithstanding the volatility in the  
24 market, gave us great confidence that we could say  
25 to our board that the deal would be capital

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2 markets.  
3 So that was the deal. And we were  
4 willing to go forward with that.  
5 Q. At a 30,000-foot level, what were the  
6 nature of the assets that you agreed to purchase?  
7 Securities, right?  
8 A. It was a large group of assets and  
9 large group of liabilities. I think Rich is  
10 really the one that could answer that better than  
11 I could.  
12 Q. He could give me more detail. What I  
13 want to know is your view, as I said, the  
14 30,000-foot view. What was your understanding? I  
15 will accept that it is not detailed.  
16 A. It was very broad.  
17 Q. What was your broad understanding?  
18 A. It was very broad.  
19 Q. You understood it included some  
20 buildings, yes?  
21 A. It was a very broad group of assets  
22 and very broad group of liabilities, and I was  
23 aware that some buildings were included. That was  
24 one of the biggest stress issues, because as you  
25 go back today and look at those buildings in

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2 accretive. Because the environment we were in,  
3 the share price would be attacked if we were not  
4 capital accretive, and that was the -- that was  
5 what the board required of me.  
6 Now, I did say to the board, and I  
7 want to be fair, there are no guarantees in this,  
8 because it was -- I don't know -- it was, it was  
9 very difficult to agree to a transaction when  
10 there kept being misinformation, lack of  
11 information, assets that couldn't be found,  
12 information that couldn't be found, antagonism and  
13 difficulty with clearing agents and clearing  
14 mechanisms, and just the volatility in the market.  
15 And you may recall that once we had  
16 the idea Sunday night and early Monday morning  
17 that potentially even post bankruptcy we might be  
18 able to do a deal for the U.S. broker/dealer, you  
19 know, by this time there was buzz all over the  
20 market that there was a U.S. Government rescue of  
21 AIG, Merrill Lynch was joining with Bank of  
22 America, Wachovia was on the rocks, Morgan Stanley  
23 was on the rocks. It was an incredibly -- as  
24 Chairman Bernanke has said, it was the week of  
25 most stress in the history of the financial

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2 Manhattan, there had been a complete collapse in  
3 commercial real estate, and the value that we were  
4 thinking would be appropriate for the headquarters  
5 building in New York, for example, is probably  
6 worth half of that today, and Barclays has lost a  
7 huge amount of money as a result of that asset.  
8 And it is a good example of how  
9 difficult this whole transaction was, because once  
10 we made this agreement, in the environment that  
11 I -- it's like catching a knife, the commercial  
12 real estate market in New York. So we destroyed  
13 50 percent of the value of what we included for  
14 that building and probably more. My understanding  
15 is there was some data centers as well. So real  
16 estate is at a horrible time since this happened.  
17 But a lot of that was happening in  
18 just this week. It was the most unstable week.  
19 Equities were down almost 500 points on Monday. I  
20 told you what Chairman Bernanke said about this  
21 week, as Secretary Paulson said. Unbelievable,  
22 unbelievable, how proud I am that our board and  
23 our group executive committee and our executive  
24 committee were able to stay steady through this  
25 and actually complete a transaction that is very

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good strategically for the reasons that we had  
talked about, but also saved 10,000 jobs in  
Manhattan.

MR. GAFFEY: Can we go off the record  
for one second.

(Discussion held off the record)

BY MR. GAFFEY:

Q. Back to -- apart from the issues with  
the real estate market today, I want to go back to  
the day a deal was agreed, September 16th, and  
what the picture was then.

Actually withdrawn.

Let me ask you a bit -- ask you, sir,  
what you mean by capital accretive. Can you  
explain that term to me.

A. The regulators that we are responsible  
to, the Financial Services Authority in the U.K.,  
holds us to specific capital standards, so for  
example, core equity, tier 1 equity, and it was  
becoming increasingly clear during this time that  
they were focusing more on core equity than tier 1  
equity, and they were thinking the banks would  
potentially have to hold higher core equity.

So when I say capital accretive,

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accretive to the capital ratios, which means that  
the asset liability mismatch had to have a  
mismatch in favor of a positive capital accretion  
or we weren't authorized to do a deal.

I think there were other times in the  
financial markets where an organization like  
Barclays would be willing to do something that  
wasn't capital accretive. Maybe they had excess  
capital or maybe times were better. But in times  
of stress, as I have said -- and keep in mind it  
was weeks later, five weeks later when World Bank  
of Scotland, the largest bank in the U.K.,  
couldn't fund itself and was rescued by the  
government.

And the government came to Barclays  
and required a capital plan. That meant we had to  
either raise significantly more capital or become  
part of the government. And you can imagine how  
important it was, looking back, that we did do a  
deal that was capital accretive and wasn't another  
drain on capital for the group.

Q. Describe to me what you meant when you  
said there had to be a mismatch between assets and  
liabilities in favor of capital accretion. Which

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had to be higher?

A. I would ask you to go to an accountant  
for that. But you can't have -- you can't have --  
I'm not a very good accountant.

Q. It is a fair fight. Neither am I.

A. Which is why I relied on the team to  
do this.

I think clearly the mismatch is what  
creates the capital accretion, and, you know,  
listen, fair enough. I have said it before in  
other situations and I'll say it again. It's not  
that there was certainty in valuations, not that  
there was certainty in the information, and it is  
clear that the volatility of the market -- even if  
there was certainty in valuation that day and  
certainty in information, of which there was  
neither, when the equity market is swinging around  
500 points a day, you can imagine the volatility.

So this was a very stressful  
situation, for me as a main board member, to be  
able to say to my board that you have the highest  
certainty possible of capital accretion as we are  
showing it to you, notwithstanding the  
uncertainty, the lack of valuations, lack of

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information and the volatility in the market, and  
I was -- to be fair, we could only do the best we  
could. There were no guarantees.

Q. Let me press back a little bit,  
because I want to make sure that I understand what  
you are talking about with the mismatch in capital  
accretion.

In layman's terms, because I'm a lousy  
accountant too, are you saying that assets had to  
exceed liability -- you needed as much confidence  
as you could get in these circumstances that  
assets exceeded liabilities? That's the mismatch  
you are talking about?

MR. HUME: Objection to form.

A. I think, you know, not being an  
accountant, I would ask you to talk to -- and I  
know you have been able to depose Rich and Patrick  
and others who were doing the accounting. I think  
I will stick to my level of knowledge.

Q. A few answers ago it is a phrase you  
used, sir, the mismatch between assets and  
liabilities, so I will take whatever explanation  
you can give me of what you meant when you talked  
about a mismatch between assets and liabilities.



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2 How were they mismatched?  
3 A. To provide capital accretion. I'm  
4 sure someone who knows more than I can tie those  
5 together for you.  
6 Q. When you talk about the mismatch, you  
7 are talking about assets exceeding liabilities,  
8 yes? Not liabilities exceeding assets. Is that  
9 right?  
10 A. As I said, I am not an accountant. I  
11 am not going to get into accounting terms. There  
12 is a good reason why they don't let me do the  
13 accounting.  
14 Q. Let me try it another way. In order  
15 to have capital accretion, sir, did you have to  
16 pay less for what you got? Did you have to get  
17 more in value than you paid? Is that what leads  
18 to capital accretion?  
19 A. I think there is --  
20 MR. HUME: I will object to the  
21 question as vague.  
22 A. I -- my answer is somewhat associated  
23 with the objection, which is that there is no one  
24 way to do anything. So again, I think I made  
25 clear I'm not the right person to go into the

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2 receiving inside.  
3 Yet, through this time, we were able  
4 to do enough work through there and through the  
5 rest of the week to insure that we could say to  
6 the board that we -- that the deal will be capital  
7 accretive, and that's why I refer to it, and it is  
8 difficult, as there were a group of assets and a  
9 group of liabilities.  
10 Q. What were the liabilities that  
11 Barclays took on?  
12 A. You know. They are all --  
13 Q. Well, I'm not the witness, sir. What  
14 is your understanding?  
15 A. There was a group of liabilities.  
16 Q. Do you have any greater understanding  
17 than there was a group of liabilities?  
18 MR. HUME: Did he then or does he now?  
19 Q. How about -- I'll take it either way  
20 and we will follow up.  
21 A. I'm sure there were some that I had  
22 more knowledge of than others and had been briefed  
23 and aware.  
24 Q. What's your recollection of what your  
25 understanding was at the time of what constituted

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2 details, and, you know, I had a staff that  
3 prepared us very well and prepared the documents  
4 for the executive committee and for the board.  
5 But I'm not comfortable in answering  
6 questions that seem to me to be of an accounting  
7 nature, which I have no expertise in. And I'm  
8 kind of glad I don't.  
9 Q. Did you have a sense when the deal was  
10 agreed that Barclays was going to have a gain as  
11 opposed to a loss on the deal?  
12 A. I was highly confident,  
13 notwithstanding the environment we were in, that I  
14 could hold my head up to the board and say yes, it  
15 is capital accretive. But I knew there was risk,  
16 and particularly in this environment where there  
17 were so many gaps up until the last minute of  
18 information, assets and liabilities that are  
19 turning out to be different than what were first  
20 reported, valuations that were different than they  
21 had been recorded on the books for, valuations  
22 that were changing minute to minute because of the  
23 volatility in the markets, and information coming  
24 in to us from clearing agents and clearing  
25 organizations that were different than we were

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2 the group of liabilities that Barclays took on?  
3 A. Any question in particular?  
4 Q. How about we go with that one?  
5 A. Oh. Well --  
6 Q. Let's read it back.  
7 (Record read)  
8 A. There was a wide variety of  
9 liabilities. If you have a question about any in  
10 particular, I'm happy to give you all the  
11 information I can.  
12 Q. Did you have an understanding that it  
13 included short positions against long positions?  
14 That those liabilities would be assumed?  
15 A. Again, I would have to refer you to  
16 Rich in terms of the specific. I don't really  
17 look at that as -- I don't recognize that way to  
18 state a liability position.  
19 Q. Let's go back to capital accretive.  
20 Was there some goal or target that you were aiming  
21 for in terms of capital accretion?  
22 A. I think more than a target, it was the  
23 fear of being able to assure the board and our  
24 regulators, because the FSA was very involved in  
25 this as well, that the deal would be capital

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 accretive, knowing that information was moving</p> <p>3 around, markets were moving around, valuations</p> <p>4 were misstated.</p> <p>5 I think that was the bigger issue for</p> <p>6 us, being able to insure it, rather than what the</p> <p>7 target was. If there was a target, I don't</p> <p>8 recall.</p> <p>9 Q. That's really my question. Was there</p> <p>10 a target? Was it a dollar? Was it 3 billion</p> <p>11 dollars?</p> <p>12 A. It's very possible there was. I</p> <p>13 certainly don't recall.</p> <p>14 Q. Let me just for clarity, my clarity,</p> <p>15 you don't recall what it was or you don't recall</p> <p>16 even whether there was one?</p> <p>17 A. I would be surprised if we didn't</p> <p>18 start with a target, and I would think that target</p> <p>19 would include recognition that the target would</p> <p>20 have to have enough buffer in it, because of the</p> <p>21 lack of information, the incorrect information,</p> <p>22 the volatility in the prices minute to minute and</p> <p>23 day-to-day, and the uncertainty and misinformation</p> <p>24 regarding the prices that were listed on the</p> <p>25 books, but I don't recall what it was.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did Barclays purchase those assets at</p> <p>3 the prices that were listed on the books?</p> <p>4 A. The way we look at it, again, is</p> <p>5 different from the way you're looking at it, which</p> <p>6 is that we looked at a series of -- you know,</p> <p>7 groups of assets and groups of liabilities that</p> <p>8 came out with the answer we wanted.</p> <p>9 Q. Was the process to go through the</p> <p>10 prices listed on the books asset by asset or asset</p> <p>11 class by asset class and come up with a price that</p> <p>12 Barclays would agree to pay?</p> <p>13 MR. HUME: Objection, lacks</p> <p>14 foundation.</p> <p>15 A. Again, I think Rich is the best one to</p> <p>16 ask exactly what the process was.</p> <p>17 Q. Let me ask you generally --</p> <p>18 A. I wasn't involved in the</p> <p>19 minute-to-minute process.</p> <p>20 Q. And I understand that, but my question</p> <p>21 is whether you had a general understanding of</p> <p>22 whether the process was to review the prices</p> <p>23 listed on the books as a means of determining the</p> <p>24 price that Barclays was willing to pay.</p> <p>25 A. Certainly the due diligence meant that</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 we went in -- the difficulty was that there were</p> <p>3 many assets and liabilities with no prices and</p> <p>4 many cases where they were incorrect prices.</p> <p>5 So this is why I asked you earlier to</p> <p>6 define how you mean book value. Does it mean</p> <p>7 what's listed on the books or does it mean what</p> <p>8 the value was on that day? It is such a</p> <p>9 nebulous -- it can be used in so many different</p> <p>10 ways.</p> <p>11 So what we were trying to do is,</p> <p>12 wherever possible, to determine value. We</p> <p>13 couldn't do it in every case. There was not</p> <p>14 enough information.</p> <p>15 Q. When you say book value is a term that</p> <p>16 can be used in different ways, you are speaking as</p> <p>17 a nonaccountant who has other people who make that</p> <p>18 definition for him? You don't have a definition</p> <p>19 of book value?</p> <p>20 A. I am probably responding more to a</p> <p>21 question earlier. It is probably a fair question</p> <p>22 on your part. When one is looking at the books</p> <p>23 and trying to determine what's the value on the</p> <p>24 books, and there is information that changes or</p> <p>25 information that's missing or prices that aren't</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 there, then it just -- it gets hard.</p> <p>3 Q. Was there any difference, any delta</p> <p>4 agreed between Barclays and Lehman, between the</p> <p>5 price Barclays would pay and what Lehman did have</p> <p>6 listed on its books?</p> <p>7 A. That's a detail that I wouldn't have</p> <p>8 been involved in, and again, I wasn't involved in</p> <p>9 what was kind of on the books. I was involved in</p> <p>10 more what's the real value.</p> <p>11 Q. Other than you, within the sort of</p> <p>12 senior team dealing with this transaction, other</p> <p>13 than you, was anyone else reporting to John Varley</p> <p>14 about the deal? Or did it always go through you?</p> <p>15 Do you know?</p> <p>16 A. A number of people would have been on</p> <p>17 many, if not all, of the calls that I had with</p> <p>18 John. Archie would have been on some. Rich would</p> <p>19 have been on many.</p> <p>20 So if you're asking from the</p> <p>21 organizational design point of view, those guys</p> <p>22 reported to me, not to John. But if you are</p> <p>23 asking from an information point of view, we would</p> <p>24 often have many people on the phone with John and</p> <p>25 the board, for just the reason I'm saying. Often</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Rich would be there because he was the one</p> <p>3 responsible.</p> <p>4 Q. Do you know if anyone gave John Varley</p> <p>5 the understanding that there was a negotiated</p> <p>6 discount of 5 billion dollars on the price?</p> <p>7 A. I can't speculate as to what John</p> <p>8 might have known.</p> <p>9 Q. Have you ever been in a conversation</p> <p>10 with Mr. Varley where he told you he understood</p> <p>11 there was a negotiated discount of 5 billion</p> <p>12 dollars on the price?</p> <p>13 A. I don't recall hearing that phrase</p> <p>14 from John or anyone else.</p> <p>15 Q. Has Mr. Varley ever shown you a</p> <p>16 document that refers to a negotiated discount of</p> <p>17 5 billion dollars in the price?</p> <p>18 A. Not to my recollection.</p> <p>19 Q. Do you recall hearing any discussion</p> <p>20 with Mr. Varley or anyone else on the senior team</p> <p>21 about there being a negotiated 5 billion dollar</p> <p>22 discount on the price?</p> <p>23 A. I think I answered that in the</p> <p>24 question before the last.</p> <p>25 Q. The question before was just</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Varley. I am broadening it out.</p> <p>3 Any discussion with anyone on the</p> <p>4 senior team about a negotiated 5 billion dollar</p> <p>5 discount on the price?</p> <p>6 A. I have no recollection of that phrase.</p> <p>7 Q. Is it your understanding that there</p> <p>8 was a negotiated discount on the price?</p> <p>9 A. I told you what my understanding was.</p> <p>10 And I didn't lie.</p> <p>11 Q. I'm not suggesting you did. I truly</p> <p>12 am not. I am just trying to get a --</p> <p>13 A. My understanding was, we needed to</p> <p>14 have capital accretion, a group of assets, group</p> <p>15 of liabilities. We talked about the buildings.</p> <p>16 Those are my understandings.</p> <p>17 And I just said I don't recall that</p> <p>18 phrase, so obviously I don't recall conversation.</p> <p>19 Q. Let me not nail it to that phrase, and</p> <p>20 I truly don't mean to suggest you are not being</p> <p>21 truthful, sir. I am trying to get an</p> <p>22 understanding so we can follow up here.</p> <p>23 Apart from the phrase negotiated</p> <p>24 discount of 5 billion dollars on the price, did</p> <p>25 you have an understanding that the price paid was</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 less than the market value of the assets acquired?</p> <p>3 A. I had a very clear understanding that</p> <p>4 this deal would be, to the extent we could</p> <p>5 guarantee it, capital accretive. That's the</p> <p>6 phraseology that I am most comfortable with.</p> <p>7 If you feel those are saying the same</p> <p>8 things, that's fine, but I'm not an accountant.</p> <p>9 Q. Let me see if they are saying the same</p> <p>10 things, and I can move on to something else.</p> <p>11 By capital accretive, do you mean that</p> <p>12 the price paid was less than the market value of</p> <p>13 the assets acquired? Does one relate to the</p> <p>14 other?</p> <p>15 A. You know what? I think anybody can</p> <p>16 figure out capital accretive.</p> <p>17 Q. You may have met the only man who</p> <p>18 can't.</p> <p>19 A. I would get some experts.</p> <p>20 Q. Does capital accretive --</p> <p>21 A. I am not an accountant, and I am not</p> <p>22 going to get sucked into trying to define</p> <p>23 accounting terms.</p> <p>24 Q. I am asking you what you mean by your</p> <p>25 use of the term "capital accretive."</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sure there is a very specific</p> <p>3 clarity around what we mean by capital accretive.</p> <p>4 It meant it was accretive to the core equity</p> <p>5 capital of Barclays, so that everything else being</p> <p>6 equal, this transaction, the core equity ratio</p> <p>7 would be positive, would have a delta that's</p> <p>8 positive, not negative.</p> <p>9 Q. Did Barclays have a gain on</p> <p>10 acquisition when this deal was completed?</p> <p>11 A. I know there was -- I don't know --</p> <p>12 how would I say this. My understanding is, in our</p> <p>13 financial reporting at the end of the year, there</p> <p>14 was a gain on acquisition. That's my</p> <p>15 understanding.</p> <p>16 Q. I am showing you, Mr. Diamond, what</p> <p>17 previously has been marked as Deposition</p> <p>18 Exhibit 22. It is a long document, but just take</p> <p>19 a look at it sufficiently to tell me whether you</p> <p>20 recognize the document.</p> <p>21 A. I certainly recognize the cover and</p> <p>22 the first few pages and assume that everything</p> <p>23 else is as it was at the time.</p> <p>24 Q. You recognize it to be Barclays'</p> <p>25 results announcement that was issued in or around</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 February of 2009?</p> <p>3 A. I haven't gone through all the pages,</p> <p>4 but it certainly appears to be, yeah.</p> <p>5 Q. Would you turn to page 95 of that</p> <p>6 document, please. And specifically, sir, I would</p> <p>7 like you to look through it sufficiently so I can</p> <p>8 ask you questions in context, but you will see</p> <p>9 there is a description in Note 11, Section A,</p> <p>10 about the acquisition of Lehman Brothers North</p> <p>11 American businesses.</p> <p>12 Would you just scan through that and</p> <p>13 let me know when you have had a chance to do that.</p> <p>14 A. OK.</p> <p>15 Q. You have had a chance to look through</p> <p>16 Section 1A describing the acquisition of the</p> <p>17 Lehman Brothers North American businesses, yes?</p> <p>18 For the record, sir, you have to answer me out</p> <p>19 loud.</p> <p>20 A. Sorry. I said yes. Sorry.</p> <p>21 Q. In the fourth paragraph of that, it</p> <p>22 says, "The excess of the fair value of net assets</p> <p>23 acquired over consideration paid resulted in</p> <p>24 2,262,000,000 of gains -- pounds of gains on</p> <p>25 acquisition." Is that a correct statement?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. That's what is said there, yeah.</p> <p>3 MR. GAFFEY: Let's go off the record</p> <p>4 for a second.</p> <p>5 (Luncheon recess)</p> <p>6 (Continued on next page)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 AFTERNOON SESSION</p> <p>3 1:09 p.m.</p> <p>4 BY MR. GAFFEY:</p> <p>5 Q. We talked at some length before the</p> <p>6 break, Mr. Diamond, about this concept that the</p> <p>7 deal needed to be capital accretive. Did you</p> <p>8 personally tell anyone at Lehman that the deal had</p> <p>9 to be capital accretive to Barclays?</p> <p>10 A. I didn't have any of the discussions</p> <p>11 about the deal with anyone from Lehman. Could</p> <p>12 that phrase have come up at some point? I can't</p> <p>13 imagine it. I have no recollection. But I was</p> <p>14 definitely not one of the people who actually</p> <p>15 discussed it.</p> <p>16 Q. So when you say it could have come up,</p> <p>17 I just want to probe what's your memory and what</p> <p>18 might be speculation.</p> <p>19 A. Let me say it more clear. I have</p> <p>20 absolutely no recollection, and I can't imagine,</p> <p>21 but I just -- I might have used the phrase in an</p> <p>22 unofficial way with someone, because capital</p> <p>23 accretion was so important to us, but I don't</p> <p>24 think I did, and I can't imagine it, and I wasn't</p> <p>25 on the front line of the negotiation at all. I</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 was very much behind.</p> <p>3 Q. To your knowledge, did anyone who was</p> <p>4 on the front line of the negotiation for Barclays</p> <p>5 tell anyone at Lehman that the transaction had to</p> <p>6 be capital accretive to Barclays?</p> <p>7 A. That would be speculation on my side.</p> <p>8 But I would imagine that they did.</p> <p>9 Q. Apart from speculating --</p> <p>10 A. I'm just speculating.</p> <p>11 Q. You have no knowledge one way or the</p> <p>12 other of whether anyone did?</p> <p>13 A. No.</p> <p>14 Q. Is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. Mr. Diamond, I am handing you what</p> <p>17 previously has been marked as Deposition</p> <p>18 Exhibit 380. Take a look through the document,</p> <p>19 please, and tell me whether you have seen it</p> <p>20 before.</p> <p>21 A. I have no specific recollection, but</p> <p>22 since it is Project Long Island, I think it is</p> <p>23 likely that it would have been shown to me in some</p> <p>24 manner, but I have no specific recollection of</p> <p>25 seeing this.</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. I don't think we have used the term on</p> <p>3 the record before, so for clarity, "Project Long</p> <p>4 Island" was the term Barclays used for the</p> <p>5 transaction with Lehman?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize this to be a</p> <p>8 presentation that was made to the board in</p> <p>9 connection with the transaction? And I direct</p> <p>10 your attention to the fact that it is dated</p> <p>11 15 September, 2009.</p> <p>12 A. Yes. As I said, I don't have any</p> <p>13 specific recollection, but being Project Long</p> <p>14 Island, I expect I probably did, but I don't</p> <p>15 recognize it.</p> <p>16 Q. Let me ask you to turn to the third</p> <p>17 page of the document, which bears Bates number</p> <p>18 81882. It is entitled "Opportunity," and then</p> <p>19 there is a list of bullet points down the</p> <p>20 left-hand side. Are we in the same place?</p> <p>21 A. Um-hm.</p> <p>22 Q. And on each -- the first bullet point</p> <p>23 there is the "addition of significant scale to</p> <p>24 U.S. global equities and fixed income franchise,"</p> <p>25 with some subpoints. That was, to your mind that</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 was one of the opportunities presented by the</p> <p>3 transaction with Lehman; is that correct?</p> <p>4 A. I am sorry, I missed -- which bullet?</p> <p>5 Q. Page 3, top bullet on the left,</p> <p>6 "Addition of significant scale."</p> <p>7 A. Yup. I just missed the question. I</p> <p>8 apologize.</p> <p>9 Q. My question is, in your mind was the</p> <p>10 addition of significant scale as described in that</p> <p>11 bullet point one of the opportunities presented by</p> <p>12 the transaction? I am asking if you agree with</p> <p>13 this PowerPoint. That point there.</p> <p>14 A. I do believe that one of the key</p> <p>15 strategic drivers to this was U.S. scale, yes.</p> <p>16 Q. And the next bullet point down,</p> <p>17 "Complete acquisition of firm architecture," was</p> <p>18 that also a key strategic consideration in doing</p> <p>19 the deal with Lehman?</p> <p>20 A. I think this opportunity for the U.S.</p> <p>21 broker/dealer came up this day. So this was</p> <p>22 probably, judging by the date, the first</p> <p>23 presentation that had been put together -- you're</p> <p>24 saying the board, I suspect you're right, although</p> <p>25 I don't know that it was to the board -- on the</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 difference between what we had been looking at</p> <p>3 over the weekend and what we were looking at with</p> <p>4 the broker/dealer.</p> <p>5 So without pushing back, I think after</p> <p>6 getting scale in the U.S., things -- I mean there</p> <p>7 is things that are important to have and things</p> <p>8 that aren't important to have, and I think the</p> <p>9 talent was critical. I think physical facilities</p> <p>10 were nice to have, but the deal could have</p> <p>11 happened without physical facilities, and I think</p> <p>12 as it says here, it is either purchase or lease,</p> <p>13 but if we didn't have the physical facilities, it</p> <p>14 would be possible to do a deal and use others, but</p> <p>15 very, very much less positive.</p> <p>16 But you're asking if they are</p> <p>17 strategic, and I don't know enough about the</p> <p>18 platforms and infrastructure to know how strategic</p> <p>19 that was, but I suspect in many cases, if you were</p> <p>20 in the business, the equities business, getting</p> <p>21 the technology and infrastructure was critical.</p> <p>22 So I think that is a fair presentation</p> <p>23 in the order it goes.</p> <p>24 Q. The third point in the presentation,</p> <p>25 which refers to a clean broker/dealer, take a look</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 through that and the subpoints in it, please. Do</p> <p>3 you know what is meant by the term "clean</p> <p>4 broker/dealer"?</p> <p>5 A. I wouldn't want to speculate what</p> <p>6 someone meant by that.</p> <p>7 Q. With regard -- without regard to the</p> <p>8 particular document, from your involvement in the</p> <p>9 transaction, was it important to Barclays that it</p> <p>10 receive a clean broker/dealer?</p> <p>11 A. What I suspect this meant is in light</p> <p>12 of the transaction that had just passed, that the</p> <p>13 troublesome assets, in particular those around</p> <p>14 commercial real estate and illiquid private</p> <p>15 equity, that were one of the difficult hurdles of</p> <p>16 doing the full transaction, would not be included</p> <p>17 here. In other words, what we are trying to say</p> <p>18 is, it is the U.S. broker/dealer and some form of</p> <p>19 U.S. broker/dealer assets as opposed to the assets</p> <p>20 of the full integrated Lehman Brothers which had</p> <p>21 been the discussion over the weekend.</p> <p>22 And again, I think this was the first</p> <p>23 foray with the board, so this was early days. We</p> <p>24 hadn't begun discussions yet. But the concept of</p> <p>25 it would be a completely different slice of assets</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 and liabilities than the deal we had discussed</p> <p>3 earlier, and those assets and liabilities would</p> <p>4 relate more to the U.S. business.</p> <p>5 Q. The next bullet point down, was --</p> <p>6 that says, "Freedom to pick and choose assets," do</p> <p>7 you have an understanding of whether that was a</p> <p>8 concept of the deal?</p> <p>9 A. I think we were speculative at this</p> <p>10 point in terms of how this would work, but the</p> <p>11 concept going in is that we are going to have to</p> <p>12 do a lot of work to decide which assets and</p> <p>13 liabilities came with the deal and which didn't.</p> <p>14 Again, given the knowledge we already</p> <p>15 had of how much misinformation, lack of</p> <p>16 information, lack of pricing, concern with the</p> <p>17 clearing agents and clearing firm, so there would</p> <p>18 be a fair amount of work to do to decide which</p> <p>19 assets and which liabilities would come, and it</p> <p>20 was certainly not clear in specific on this</p> <p>21 Monday.</p> <p>22 Q. You have referred a couple of times</p> <p>23 today to the clearing agent. Is there a</p> <p>24 particular clearing agent you have in mind?</p> <p>25 A. I think Lehman's main clearing agent</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 was JP Morgan, and I know there were a lot of</p> <p>3 issues with them that we were involved with. They</p> <p>4 may have had other clearing agents as well, and I</p> <p>5 suspect given the situation of bankruptcy, they</p> <p>6 probably had a lot of outs with clearing agents</p> <p>7 all around the street.</p> <p>8 I think JP Morgan was their primary</p> <p>9 clearing agent, but I'm not positive on that.</p> <p>10 Q. I will come to it later, but you had</p> <p>11 some involvement with JP Morgan in connection with</p> <p>12 this transaction, had calls with them, discussions</p> <p>13 with them?</p> <p>14 A. Not at this point.</p> <p>15 Q. Later in the week?</p> <p>16 A. I had some discussions, yes.</p> <p>17 Q. Was Barclays -- on the 15th, was</p> <p>18 Barclays taking the negotiating position, as it</p> <p>19 were, with Lehman that it wanted freedom to pick</p> <p>20 and choose the assets it would take?</p> <p>21 A. I think at this point we hadn't even</p> <p>22 had discussions with Lehman, other than to say we</p> <p>23 should pursue the U.S. broker/dealer. So this is</p> <p>24 a very early version of how we are going to</p> <p>25 approach a different transaction.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Exactly the timing of this document</p> <p>3 versus that, if this was a -- so.</p> <p>4 Q. I'm afraid for this one I don't have a</p> <p>5 time stamp, and I don't have an e-mail, so I can't</p> <p>6 put it in a sequence for you in the day.</p> <p>7 A. As I said, I don't have a specific</p> <p>8 recollection of where and when this was presented,</p> <p>9 but it resonates, if you follow.</p> <p>10 Q. Putting before you, Mr. Diamond, what</p> <p>11 has previously been marked as Deposition</p> <p>12 Exhibit 330, an e-mail from you to Mr. Ricci and</p> <p>13 Mr. del Missier with an e-mail chain below it</p> <p>14 entitled "Long Island broker/dealer."</p> <p>15 Take a minute, sir, and tell me</p> <p>16 whether you recall seeing the document before</p> <p>17 today.</p> <p>18 A. I'm refreshing myself now. Since I</p> <p>19 wrote it, I'm sure I did. It is my e-mail box.</p> <p>20 Q. All right then. Do you recall -- down</p> <p>21 in the -- if you go to the e-mail in the bottom of</p> <p>22 the chain, the one from you to Mr. Varley and</p> <p>23 Mr. Lucas with cc's to Harding, Ricci, Clackson,</p> <p>24 you give what are high-level numbers,</p> <p>25 10,000 people, 100 billion dollar balance sheet,</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 et cetera, et cetera, and you say, "Need U.S.</p> <p>3 business, broker/dealer capitalized at 5 billion,</p> <p>4 we have 2 in BarCap, so need 3 to 5 billion equity</p> <p>5 raising, I think."</p> <p>6 Do you see that? What were you</p> <p>7 conveying to Mr. Varley and Mr. Lucas when you</p> <p>8 wrote that? Can you explain that to me?</p> <p>9 A. Yes. Monday being the first day,</p> <p>10 looking at this, I was trying to get them a</p> <p>11 very -- kind of frame -- and you can see how I am</p> <p>12 framing it with big round numbers.</p> <p>13 And I'm trying to figure out whether</p> <p>14 the 6:32 would have been U.K. time or U.S. time.</p> <p>15 I suspect it was U.K. time, because all my</p> <p>16 computers were on U.K. time. But I'm not positive</p> <p>17 of that.</p> <p>18 So I would suspect I wanted to get</p> <p>19 them before they went home that evening to kind of</p> <p>20 frame the issues, because time was of the essence</p> <p>21 and we were going into further discussions that</p> <p>22 night. So that's how I think of it.</p> <p>23 Q. So we're talking late afternoon London</p> <p>24 time, here, four hours earlier?</p> <p>25 A. Yes. It is either 6:30 p.m. in London</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 or it's 1:30 p.m. in New York.</p> <p>3 Q. Regardless of the time of day, and we</p> <p>4 will -- I'm not able to help you on it because the</p> <p>5 documents were produced to me by your counsel, I</p> <p>6 just don't know. I don't see the New York time.</p> <p>7 But regardless of the time of day, can</p> <p>8 you explain to me what it is that you are trying</p> <p>9 to convey to Mr. Varley et. al. when you say "need</p> <p>10 U.S. business, broker/dealer capitalized at</p> <p>11 5 billion, we have 2 in BarCap so need 3 to 5</p> <p>12 billion equity raising I think."</p> <p>13 A. There is a -- let me take the last one</p> <p>14 you bring -- around the capital?</p> <p>15 Q. OK.</p> <p>16 A. Yes? Is that what you want me to</p> <p>17 address?</p> <p>18 Q. Whatever order you want to take it in,</p> <p>19 that's fine. Sure.</p> <p>20 A. That's the regulatory capital</p> <p>21 requirement. But it was a very high-level look,</p> <p>22 so that the finance department under Chris would</p> <p>23 understand that we may have to move more capital</p> <p>24 into the U.S. business. Because there is a -- if</p> <p>25 you are going to have a bigger U.S. broker/dealer,</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 you will have a bigger capital requirement in the</p> <p>3 U.S.</p> <p>4 Q. I take it you would need to raise</p> <p>5 capital to the extent it didn't turn out to be</p> <p>6 capital accretive. Am I understanding that</p> <p>7 correctly?</p> <p>8 A. Yes, or you would have to move it from</p> <p>9 somewhere else. That's why I am saying -- I am</p> <p>10 actually not an expert here, and I am throwing it</p> <p>11 to Chris, who is the finance director, with very</p> <p>12 round numbers, so he can get his head under it.</p> <p>13 Q. At a very raw level, for my</p> <p>14 understanding, and again this goes to the concept</p> <p>15 of capital accretion we have been talking about,</p> <p>16 to the extent the deal itself is capital</p> <p>17 accretive, you need to raise less capital</p> <p>18 extraneously, yes?</p> <p>19 A. Um-hm -- sorry. Let me -- I need to</p> <p>20 think about that, because I get myself so</p> <p>21 confused.</p> <p>22 To the extent that it is capital</p> <p>23 accretive -- there are two different issues here.</p> <p>24 There is the group capital, and from a group</p> <p>25 capital point of view of our core equity ratio,</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that is the most sensitive to the FSA. And the</p> <p>3 FSA is our lead regulator, and they were the ones</p> <p>4 that required a capital plan, as I said, weeks</p> <p>5 later, in the depth of World Bank of Scotland</p> <p>6 being bailed out by the government, Lloyds being</p> <p>7 bailed out by the government, a very, very crisis</p> <p>8 in the capital markets around the world.</p> <p>9 Those discussions were all about our</p> <p>10 core equity primarily and our tier 1 equity behind</p> <p>11 that at a group level.</p> <p>12 It is possible that a group could have</p> <p>13 their regulatory capital in one jurisdiction going</p> <p>14 up and down and being replaced from somewhere else</p> <p>15 where it doesn't affect the core. But in a case</p> <p>16 like this where there is an acquisition of new</p> <p>17 business and new assets and new -- it would take</p> <p>18 us -- we will use up some of our existing capital</p> <p>19 resources.</p> <p>20 While this specifically refers to the</p> <p>21 U.S. broker/dealer, the point you're asking is,</p> <p>22 did this transaction, everything else being equal,</p> <p>23 if it weren't capital accretive, use up the group</p> <p>24 capital. Yes, it would. That's why it was so</p> <p>25 important to the group that the deal was capital</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 accretive, not reducing our core equity ratio.</p> <p>3 But there is a difference between this</p> <p>4 comment, which refers to the U.S. broker/dealer,</p> <p>5 and capital required in the U.S. broker/dealer.</p> <p>6 Technically that could come from another area of</p> <p>7 the company.</p> <p>8 Q. I think I understand that. To pull</p> <p>9 the piece out of that answer -- regardless of</p> <p>10 which entity's capital we are talking about, as a</p> <p>11 general matter, to the extent the transaction</p> <p>12 itself is capital accretive, you won't need to</p> <p>13 raise capital elsewhere, yes?</p> <p>14 A. If the deal is capital accretive --</p> <p>15 there are two different statements. One of the</p> <p>16 reasons the deal needed to be capital accretive</p> <p>17 was because there wasn't much capacity in the</p> <p>18 markets to raise capital outside.</p> <p>19 Now, if you think about this, within a</p> <p>20 couple of weeks, when the Fed -- sorry -- when the</p> <p>21 FSA came to us for a capital plan, and we went to</p> <p>22 the Middle East and raised about 7 billion pounds,</p> <p>23 6 to 7 billion pounds in equity -- this isn't</p> <p>24 one -- this may not be 100 percent correct, but it</p> <p>25 is pretty darn close -- within weeks of this deal</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 when we raised that equity, there was no more</p> <p>3 equity raised for a financial institution in the</p> <p>4 world until the second quarter of 2009. The</p> <p>5 markets locked up.</p> <p>6 Our board was so appropriate to say</p> <p>7 this can only be done -- we will put the entire</p> <p>8 franchise of Barclays and the U.K. financial</p> <p>9 system at risk if we don't pay attention to</p> <p>10 capital. That's why capital accretion was so</p> <p>11 important, because back to Bernanke's comment</p> <p>12 about the period, the uncertainty of assets.</p> <p>13 This was the riskiest transaction. If</p> <p>14 you step back and think about it for a second, the</p> <p>15 transaction that was proposed with the headline</p> <p>16 price that we all know was in the market and all</p> <p>17 the pieces on Tuesday became public, and there was</p> <p>18 a -- most of a week before that transaction</p> <p>19 completed and closed, which I think was Monday</p> <p>20 morning the following week.</p> <p>21 In that time, there was no other</p> <p>22 inquiry or bid or suggestion of a bid or inquiry,</p> <p>23 from Goldman Sachs or Morgan Stanley, from Merrill</p> <p>24 Lynch, from Bank of America, from Wells Fargo,</p> <p>25 from any other bank in the United States, not from</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Deutsch, not from Credit Suisse, not from any</p> <p>3 Swiss Banks, not from any French banks, not from</p> <p>4 any German banks, not from any hedge funds, not</p> <p>5 from any private equity funds, not from China, not</p> <p>6 from Japan, not from anywhere in the world. The</p> <p>7 only transaction proposed to save Lehman Brothers</p> <p>8 U.S. from bankruptcy was the Barclays transaction.</p> <p>9 No one else even inquired.</p> <p>10 This was the most destabilizing period</p> <p>11 in the history of the financial markets. The risk</p> <p>12 was incredible, and the board said to me, we can't</p> <p>13 do a transaction that isn't capital accretive for</p> <p>14 those reasons.</p> <p>15 Q. When you were -- after the bankruptcy</p> <p>16 filing, you were contacted by some of the senior</p> <p>17 executives of Lehman, perhaps Mr. McDade; is that</p> <p>18 right?</p> <p>19 A. I don't recall.</p> <p>20 Q. I'm trying to put a time piece on</p> <p>21 this. The bankruptcy filing happens, and when is</p> <p>22 the next time you speak with somebody from Lehman?</p> <p>23 MR. HUME: Objection, lacks</p> <p>24 foundation. You haven't established when</p> <p>25 the filing was for the witness.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. OK. The filing was in the early</p> <p>3 morning hours of Monday, the 15th of September,</p> <p>4 1 a.m., 2 a.m., something like that.</p> <p>5 After that point, when did you first</p> <p>6 have any conversation with anyone at Lehman about</p> <p>7 a renewed negotiation, renewed deal?</p> <p>8 A. We had a conference call somewhere</p> <p>9 around 5 or 6 a.m.</p> <p>10 Q. Who was on the call?</p> <p>11 A. Where I am -- I know I was. I know</p> <p>12 Bart was. I think Bart had a number of people</p> <p>13 with him in his office, and I knew he did, but I</p> <p>14 don't think I asked who was there.</p> <p>15 Q. OK.</p> <p>16 A. Rich was with me, and I can't recall</p> <p>17 whether -- it's was possible that Michael Klein</p> <p>18 and Archie were with me, but I can't recall. But</p> <p>19 I would expect it would have been the four of us.</p> <p>20 Jerry, if he hadn't gone back to Europe yet,</p> <p>21 probably would have been there as well.</p> <p>22 Q. Now, when these conversations began,</p> <p>23 again, starting with that call, it is -- again, I</p> <p>24 am trying to save us all some time here -- the</p> <p>25 conversations then continued, the negotiations</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 continued after that first call, yes? Yes, is</p> <p>3 that right?</p> <p>4 A. Yes. Sorry.</p> <p>5 Q. Did you receive an assurance from the</p> <p>6 leadership team at Lehman that this was a</p> <p>7 conversation that was taking place only with</p> <p>8 Barclays?</p> <p>9 A. That's a very good question. There</p> <p>10 wasn't any other conversations going on. I don't</p> <p>11 recall a specific conversation, but there very</p> <p>12 likely was. It was kind of the environment where</p> <p>13 news was moving so quickly, that it kind of would</p> <p>14 have been known, but it is a good question, and I</p> <p>15 don't have a specific moment in time when that</p> <p>16 conversation happened, but I suspect -- I suspect</p> <p>17 it was unnecessary.</p> <p>18 Q. Let me give you, Mr. Diamond, what has</p> <p>19 been previously marked as 348-A. It is an e-mail</p> <p>20 from Marie Smith to a long list of people,</p> <p>21 including yourself. You will see your name near</p> <p>22 the end of the "to" line there.</p> <p>23 It's entitled "Project Long Island</p> <p>24 Communications," and attached to it is a note from</p> <p>25 John Varley on Project Long Island. You see the</p>



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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 reference to it in the cover sheet, yes?</p> <p>3 Well, it doesn't matter. Let's turn</p> <p>4 to the second page. To the third page, I mean, at</p> <p>5 Bates number 7917 -- 79166, a memorandum to the</p> <p>6 directors from John Varley dated 15 September,</p> <p>7 2008, subject Long Island.</p> <p>8 Do you recall receiving a copy of this</p> <p>9 memo from Mr. Varley?</p> <p>10 A. No, but I'm sure I did. I don't</p> <p>11 object to that. I would have been on the</p> <p>12 distribution, yes.</p> <p>13 Q. That's why I directed your attention</p> <p>14 to the front. You are not on the face of the memo</p> <p>15 itself, but --</p> <p>16 A. Right.</p> <p>17 Q. If you would take a look at the second</p> <p>18 paragraph, it says, "As we anticipated, RED was</p> <p>19 contacted overnight by Long Island leadership</p> <p>20 team." Do you see where I am?</p> <p>21 A. Um-hm.</p> <p>22 Q. Robert E. Diamond, are you referred to</p> <p>23 as RED in office memoranda?</p> <p>24 A. Yes.</p> <p>25 Q. Further on, it says this leadership</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 team was "asking whether we might be in a position</p> <p>3 to acquire large parts of the business from the</p> <p>4 administrators, and that if so, they would seek to</p> <p>5 protect as much of the business as they could as a</p> <p>6 going concern. We received assurance from them</p> <p>7 that this was a conversation taking place only</p> <p>8 with Barclays, and we have no reason to doubt that</p> <p>9 assurance, although of course Long Island staff</p> <p>10 are being raided freely around the world as I</p> <p>11 write."</p> <p>12 Looking at that paragraph in</p> <p>13 Mr. Varley's memorandum, does that refresh your</p> <p>14 recollection as to whether you received in your</p> <p>15 communications with the leadership at Lehman</p> <p>16 assurances that they were talking only to</p> <p>17 Barclays?</p> <p>18 A. Let me finish reading it. That's a</p> <p>19 good question.</p> <p>20 I am sorry, it took me a while to read</p> <p>21 it, and I think I remember the question, but I</p> <p>22 think I would feel better if I ask you to say it</p> <p>23 again.</p> <p>24 Q. Now having read it, does it refresh</p> <p>25 your recollection as to whether in your</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 conversations with Lehman leadership they gave you</p> <p>3 assurances that the conversation was taking place</p> <p>4 only with Barclays?</p> <p>5 A. It doesn't, but I see it here, and so</p> <p>6 it would appear that we did have those</p> <p>7 conversations, but I have no specific recollection</p> <p>8 of it. But I don't -- I take it at face value of</p> <p>9 John saying that we had those conversations and --</p> <p>10 I think what -- and the reason, as you can</p> <p>11 imagine, would be as he goes down the severity of</p> <p>12 the risk of us continuing to proceed.</p> <p>13 Q. As he goes down -- I've seen this in a</p> <p>14 couple of documents -- there is a reference to</p> <p>15 Long Island 2. It may not be referred to here,</p> <p>16 but I have seen references to Long Island 1. Is</p> <p>17 that vernacular that was used within Barclays?</p> <p>18 A. I interpret this and interpreted it at</p> <p>19 the time as he was talking about the deal as</p> <p>20 proposed to Secretary of the Treasury Paulson and</p> <p>21 Fed President Geithner, which didn't consummate on</p> <p>22 Sunday, and I think he is taking a license of</p> <p>23 shorthand here. There was no official we have two</p> <p>24 projects. I think he was saying the first one</p> <p>25 ended Sunday, now we are on to the second one.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. 2 would be the second one. It is the</p> <p>3 second one.</p> <p>4 A. Yes.</p> <p>5 Q. Long Island 1 would be the deal before</p> <p>6 the weekend that didn't conclude, yes?</p> <p>7 A. Yeah.</p> <p>8 Q. And Long Island 2 would be the deal</p> <p>9 after the bankruptcy?</p> <p>10 A. That would be my assumption.</p> <p>11 Q. Was there a Long Island 3?</p> <p>12 MR. HUME: Objection, vague.</p> <p>13 Q. That's a good point. Let me rephrase</p> <p>14 the question.</p> <p>15 Was the term "Long Island 3" also</p> <p>16 used?</p> <p>17 A. If you asked me earlier did we use 1</p> <p>18 and 2, I wouldn't have remembered. I can't</p> <p>19 imagine why we would have used a 3, because -- I</p> <p>20 can't imagine that we would have used Long Island</p> <p>21 3, but this is kind of John's shorthand. It</p> <p>22 wasn't an official project name.</p> <p>23 Q. Did the deal change over the week,</p> <p>24 Long Island 2, did it change over the week before</p> <p>25 it closed?</p>

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2 A. There wasn't a deal at this point.  
3 Q. Once the deal was made, did it change  
4 over the week before it closed?  
5 MR. HUME: I am going to object to  
6 that question as vague as well.  
7 A. The deal, which is -- I think I see  
8 what you are getting at. Well, at this point  
9 there wasn't a deal. There was a we are going to  
10 have to do some work and see if we can put  
11 together the framework of a deal, which we would  
12 be acquiring the U.S. broker/dealer with a group  
13 of assets and a group of liabilities, and  
14 assurances, as we had talked about, to the best of  
15 our ability to ensure capital accretion. The  
16 broad parameters were what we consummated on  
17 Monday morning.  
18 In terms of the specifics, that was  
19 negotiated by Rich, and I really wasn't close to  
20 the specifics and the writing.  
21 Q. Given that, would you know one way or  
22 the other whether once a deal was made on the  
23 Tuesday, on the 16th, was agreed, whether the  
24 component parts, whether the terms of that deal  
25 changed in between that day, the 16th, and the

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 control with bankruptcy and with all of the  
3 counterparties around the world, including the  
4 clearing agencies and the clearing agent grabbing  
5 anything they could.  
6 So sadly it was all over the place.  
7 Q. The deal as it ultimately closed, was  
8 that deal capital accretive to Barclays, after all  
9 this tumult?  
10 A. On what date?  
11 Q. On the 22nd of September, 2008.  
12 A. I am trying to think if we actually do  
13 capital reporting on that date. What it depends  
14 on is in a market such as the market we were  
15 operating in, with the value that day of the  
16 assets and the liabilities of the organization,  
17 but we had agreed to deal -- again I am sorry to  
18 say it this way -- to the best of our ability to  
19 deliver to the board what they required of us, it  
20 was a deal that was capital accretive, but it  
21 depends on what day you say you are valuing all  
22 those securities.  
23 Q. When the deal closed, on the day the  
24 deal closed, the 22nd of September, were you able  
25 to report to your board that you satisfied the

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2 closing on Monday, September 22nd?  
3 A. The deal, as I just defined it, didn't  
4 change at all. The components sadly were all over  
5 the place. The inability of Lehman to deliver  
6 things that they had said they could deliver early  
7 on, the confusion between the clearing agent and  
8 the broker/dealer, the need to recognize what we  
9 would need to do a transaction, therefore find  
10 other assets and other liabilities, those things  
11 kept evolving during the week.  
12 But the broad parameters of the deal  
13 never changed, but sadly the world was falling  
14 apart. Lehman very sadly was well into falling  
15 apart, with clearing firms and clearing agents  
16 grabbing collateral wherever they could and not  
17 returning it. Things that we were looking at in  
18 the records of the firm not actually being where  
19 they said they were going to be.  
20 It was a probably -- I'm trying to be  
21 sure not to overstate it, but it was crisis, it  
22 was chaos, it was out of control, and for us to be  
23 able to save the 10,000 jobs in the firm and the  
24 broker/dealer was very, very difficult that week,  
25 because this was a firm that had spun out of

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 demand that it be capital accretive?  
3 A. That's my understanding. I don't  
4 recall a report going in, but that would be my  
5 understanding.  
6 Q. Now, you mentioned as the deal  
7 continued over the week, that there was a need to  
8 find other assets and other liabilities. Do you  
9 recall that?  
10 A. I am sorry.  
11 Q. You mentioned in your answer a moment  
12 ago, as the deal went through the week, there was  
13 a need to find other assets and other liabilities?  
14 A. Lehman was scrambling quite a bit, not  
15 Barclays, but Lehman was scrambling quite a bit.  
16 It wasn't a Barclays request. It was -- sadly,  
17 very sadly, Lehman Brothers was in chaos and out  
18 of control. So very often things that they would  
19 report they could do they actually couldn't do,  
20 because they couldn't locate them or a clearing  
21 agent had taken them away.  
22 So it was very, very touch and go  
23 whether or not we would complete this transaction,  
24 and Barclays never changed anything. But Lehman  
25 Brothers was changing second to second and minute

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 to minute.  
3 Q. Are you quite certain in your memory,  
4 sir, as you sit here, that it was not a Barclays  
5 request?  
6 A. If you can tell me the request, I'm  
7 happy to answer it.  
8 Q. The request that additional assets be  
9 found. Are you quite certain that that request  
10 did not come from Barclays?  
11 A. As I said, I was not involved -- what  
12 I said, and I would prefer my words don't get  
13 twisted, what I said is the changes were driven by  
14 Lehman's inability to deliver the things that they  
15 had assured that they could deliver.  
16 They were finding that assets that  
17 they thought were there weren't there, that  
18 clearing agents or clearing firms had taken them,  
19 and it was in chaos, and it was very difficult for  
20 the people from Lehman Brothers to deliver on what  
21 they had hoped to be able to deliver on. That's  
22 what I said.  
23 Q. Did Barclays request that Lehman add  
24 additional assets to the transaction?  
25 A. I wasn't a part of any specific

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 MR. HUME: Objection, asked and  
3 answered.  
4 A. I will try one more time.  
5 Q. I am doing the best I can to  
6 understand you, sir.  
7 A. OK. Can you understand the fact that  
8 Lehman was in chaos? Do you disagree with that?  
9 Q. We talked about this before, sir. I  
10 ask the questions, you answer them.  
11 A. You said you were doing the best you  
12 could to understand it.  
13 Q. Do you need the question read back,  
14 sir?  
15 A. One, Lehman was in chaos. They  
16 couldn't locate things that they said they could  
17 deliver to us. They couldn't understand the value  
18 of many things. They had misstated values. I  
19 could go on and on and on and on. It was in  
20 chaos, and they were under attack from their  
21 counterparties and their clearing agents.  
22 So we had to be flexible, and I'm sure  
23 there were discussions with our team and their  
24 team about how we were going to resolve this, and  
25 I know they were making changes and suggestions to

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2 negotiation, so I think you may have had a chance  
3 to discuss that with Rich.  
4 Q. To your knowledge, to your knowledge,  
5 did Barclays ask or demand that Lehman add assets  
6 to the transaction?  
7 A. To my knowledge and understanding,  
8 there was always a group of assets and a group of  
9 liabilities that when we settled the deal needed  
10 to give us the highest chance of having capital  
11 accretion or I couldn't approve the deal.  
12 The specifics of that between Lehman  
13 and Barclays were negotiated by Rich and his team,  
14 and I wasn't involved, so I can't comment on that.  
15 I think you have had an opportunity to talk to  
16 Rich and his staff.  
17 Q. I get it about how you don't have the  
18 specifics. I understand that. I know you are a  
19 chief executive.  
20 A. President actually.  
21 Q. President. You're up there. OK.  
22 I am not going to ask you what the  
23 particular assets were. But did it come to your  
24 attention during the week that additional assets  
25 were needed to complete the transaction?

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 the collateral right up to the 11th hour.  
3 Q. Did it ever come to your attention  
4 while all this was going on that there might be  
5 insufficient assets for Barclays to close the  
6 deal?  
7 A. There were many times leading right up  
8 until getting to the bankruptcy hearing when it  
9 was unclear whether or not the things that Lehman  
10 felt they could provide, they could provide, and  
11 they were continuing, continuing right up until  
12 the 11th hour, to look for assets so they could  
13 satisfy the pool of assets and liabilities that we  
14 had talked about in concept and the accretion that  
15 we had talked about in concept.  
16 And yes, that was being worked on  
17 until very, very late Friday, so much so that I  
18 recall it was a period when we thought we might  
19 not be able to complete the transaction and a  
20 period when we weren't sure that Lehman would get  
21 to the bankruptcy hearing on time.  
22 Q. When was the point? When was the  
23 point you just described? When during the week  
24 did it appear that they might not be able to get  
25 enough assets?

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 A. Many times.  
3 Q. Do you recall a meeting on Friday  
4 morning devoted to that topic? Friday, the 19th?  
5 A. I remember many conversations on  
6 Friday that these situations were going on.  
7 Q. And on that Friday, the 19th, did it  
8 come to your attention that personnel at Barclays  
9 told Lehman that they needed to find additional  
10 assets to add into the deal?  
11 A. I knew Lehman was still looking for  
12 assets on Friday. That is all I can say.  
13 Q. When you say that is all you can say,  
14 I think we are missing each other a little bit  
15 here. My question is, did it come to your  
16 attention that anyone from Barclays said to anyone  
17 at Lehman you need to find more assets?  
18 A. I know Lehman was not able to deliver  
19 on some assets that they promised and therefore  
20 they had to get others, and I'm not privy to any  
21 conversations from Barclays.  
22 Q. Do you know one way or another,  
23 whether you were privy to conversations or have  
24 knowledge direct or indirect, do you know whether  
25 anyone at Barclays demanded from Lehman on Friday,

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 for, Lehman was still trying to fulfill the  
3 assets.  
4 Q. Do you know if it was --  
5 A. Let me finish, please.  
6 Q. Sure.  
7 A. Don't interrupt me.  
8 And I don't have any specific  
9 inclusion in any requests made from Barclays in  
10 terms of the negotiation of the assets. I think  
11 that answers the question directly.  
12 Q. Do you have any general recollection  
13 of any requests made from Barclays in terms of the  
14 negotiation of the assets?  
15 A. I wasn't involved.  
16 Q. Did anyone report to you as a result  
17 of the scrambling that you are discussing on  
18 Friday, Barclays clawed an additional 3 billion  
19 dollars of value back into the deal?  
20 A. There was a need on Friday because of  
21 the sad nature of what had happened to Lehman  
22 Brothers for Lehman to find assets or we weren't  
23 going to be able to settle with the deal.  
24 It is very possible that 3 billion was  
25 the number. I have a vague recollection of that

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 September 19th, that Lehman add assets to the  
3 transaction?  
4 A. My patience is doing a great job so I  
5 am going to try one more time.  
6 There were many times on Friday and  
7 many times during the week from Tuesday through  
8 Friday where the people from Lehman were screwing  
9 around trying to find assets. I didn't have any  
10 direct conversations with someone from Barclays.  
11 You keep asking me to confirm  
12 something from Barclays. What I can confirm to  
13 your question is Lehman was in chaos and Lehman  
14 was scrambling to find enough assets to complete  
15 the deal, and that was happening from the moment  
16 we signed Tuesday right through the 11th hour  
17 Friday. It was very sad.  
18 Q. You don't know one way or the other  
19 whether someone from Barclays said to someone from  
20 Lehman on Friday, the 19th, you need to get more  
21 assets?  
22 A. I am not going to speculate who said  
23 what, but I certainly answered that very, very  
24 directly. Lehman was looking for assets until the  
25 11th hour. Whether it was asked for or not asked

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 number, but I'm not sure if it was 1 or 4. It was  
3 a big number. And I can absolutely confirm, as  
4 sad as it was, that Lehman was in chaos and out of  
5 control, and the deal almost didn't close because  
6 they couldn't deliver the assets that they had  
7 committed to.  
8 Q. From whom did you learn that  
9 additional assets had been added to the deal?  
10 A. I didn't say that additional assets  
11 had been added to the deal. What I said was  
12 Lehman was scrambling.  
13 Q. I guess I need to ask again. My  
14 question was, did anyone report to you as a result  
15 of the scrambling you were discussing on Friday  
16 that Barclays had clawed an additional 3 billion  
17 dollars of value back into the deal? The question  
18 is, did anyone tell you that? Can you give me a  
19 name? Can you tell me if you spoke to anyone  
20 about that topic or communicated with anybody  
21 about that topic?  
22 A. Can you read my answer to that. I  
23 already gave an answer.  
24 (Record read)  
25 Q. Now can you answer the question that's

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 pending?  
3 A. I don't recall any specific  
4 conversations. I was in many -- I was in and out  
5 of many meetings while this was going on, but I  
6 was not in charge. I was not running the process,  
7 so.  
8 Q. Do you recall --  
9 A. And I recall that through the day we  
10 got to the number we needed to get to so the deal  
11 could be capital accreted, but I think there was a  
12 large amount of assets that had not been  
13 identified or delivered to get to the deal that we  
14 had agreed.  
15 Q. Do you recall that it was Michael  
16 Klein who communicated to you that 3 billion in  
17 value had been clawed back into the deal?  
18 MR. HUME: Objection, you have asked  
19 that and he said he had no specific  
20 recollection.  
21 MR. GAFFEY: Not with regard to  
22 Michael Klein, I haven't.  
23 Q. Do you recall that it was Michael  
24 Klein who communicated to you that 3 billion had  
25 been clawed back into the deal?

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. Do you know what other types of assets  
3 were added to the deal on Friday?  
4 A. I probably would if I went back and  
5 read all the notes, but it is hard to recall off  
6 the top of my head. It was chaos.  
7 Q. Did you keep notes at the time?  
8 MR. HUME: He didn't say his notes.  
9 MR. GAFFEY: I know what he didn't  
10 say. I would like him to say as an answer  
11 to the question I asked.  
12 Q. Did you keep notes at the time?  
13 A. I don't think I did. I am trying to  
14 think through. I am a note taker and I kept a lot  
15 of notes of conversations with Secretary Paulson  
16 because of the official nature of them.  
17 I don't think I even had a notebook  
18 with me during the week, so I am going to say no,  
19 but I'm sure I could have scribbled something  
20 somewhere, and again, it kind of comes to the fact  
21 that I wasn't running the meetings, so I wasn't  
22 trying to note take, whereas if I was having an  
23 official conversation with a public official, I  
24 would want to kind of report that. So I don't  
25 think I did.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 A. Well, Michael Klein was right at the  
3 coal face working for Rich. And I don't actually  
4 recall if it was 3 billion or what we were able to  
5 arrive -- I think it was 3 billion, when you say  
6 it, because if you look at the 15c3-3 assets and  
7 some of the other things they were working on, I  
8 think it was on the order of 3 billion.  
9 I don't know if it was Michael or  
10 Archie or Rich. It probably would have been one  
11 of them, and it would have been in the context of,  
12 you know, we can complete.  
13 Q. Do you know -- you made a reference to  
14 15c3-3 assets. Do you know that was one of the  
15 components of additional value that was added on  
16 Friday?  
17 A. I wasn't at the coal face, so this is  
18 difficult, but I have a recollection of that being  
19 part of what was happening on Friday, but I wasn't  
20 doing the negotiation at the coal face.  
21 Q. One way or another, word came back  
22 from the coal face that one of the things that was  
23 added to the deal was 15c3 assets?  
24 A. Well, I was in and out of many of the  
25 conference rooms that were going on.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. Let me show you what previously has  
3 been marked as Exhibit 149-A, an e-mail chain  
4 beginning at the bottom with an e-mail from  
5 Michael Klein to you, Rich Ricci, Jerry del  
6 Missier, Archie Cox, on 20 September, a response  
7 from you to Mr. Klein and a response from  
8 Mr. Klein to you.  
9 Would you read through that chain of  
10 e-mails and let me know when you have had a chance  
11 to do that.  
12 Have you had a chance to look through  
13 it?  
14 A. I have.  
15 Q. Do you recall exchanging these e-mails  
16 with Mr. Klein when he reported to you that the  
17 court has approved Barclays' acquisition of Lehman  
18 Brothers?  
19 A. I remember he is the one that -- he is  
20 not the only one, by the way, that told me, but I  
21 do remember Michael e-mailed me with glee, and I  
22 had not gone to bed yet. I was still waiting up  
23 to find out.  
24 So that's a very typical response from  
25 me of yes with exclamation points.

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2 Q. I won't count them up, but there is a

3 lot of them.

4 A. There is a lot of them. Sometimes

5 they go across the whole page when I am really

6 excited.

7 Q. Mr. Klein reports to you, "Bob, great

8 day. We clawed back 3 billion more of value in

9 the transaction and cut the building prices by

10 160 million tonight, but all of that pales in

11 comparison to Barclays' share price today. All

12 the best."

13 What did you understand Mr. Klein to

14 be reporting to you with his reference to clawing

15 back 3 billion of value in the transaction?

16 A. That was getting us to the place we

17 had to be in the transaction. So it was kind of

18 repetition. It's what we were all working toward

19 all day Friday and time -- and the share price, to

20 be honest with you, I can't remember what the

21 share price was, but I don't think he would have

22 written that if it was going down.

23 Q. Probably not. I am a little more

24 focused on the additional value piece.

25 A. That was in the context of that's what

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1 DIAMOND - HIGHLY CONFIDENTIAL

2 have to walk away and not do the transaction. We

3 couldn't put Barclays at risk of bankruptcy.

4 Q. Just take a quick look back, if you

5 would, and I lost track of the exhibit number of

6 the memorandum from Mr. Varley, Project Long

7 Island, the memorandum we looked at a moment ago.

8 That one there. Just so I can read it into the

9 record, Exhibit 348-A.

10 Just at the end of the memo, you see

11 Mr. Varley writing that "as Long Island develops,

12 it is likely to develop quickly. The purpose of

13 this note is to give you some initial briefing and

14 as well to say that if we make progress overnight

15 we'll arrange a board telephone conference on

16 Tuesday to brief you."

17 Do you recall there being a board

18 telephone conference on the Tuesday?

19 A. There were almost -- sometimes they

20 were two or three times a day over this week, so

21 without a specific -- if you said to me did we

22 have one, we would have had to or I would not have

23 been able to announce the deal.

24 So I think that is a long way of

25 saying yes without specifics. Of course we had --

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2 we were all working for.

3 Q. I asked you this morning and I think

4 you told me you didn't recall whether or not the

5 mandate of being capital accretive had a number on

6 it, had a target. Does this refresh your

7 recollection that the degree of capital accretion

8 was in the area of 3 billion dollars?

9 A. It didn't really have a target. This

10 talked about the value in the transaction, not the

11 capital accretion. But I think the thing that's

12 important to understand is that every single day

13 we are waiting for this transaction to settle, the

14 markets are all around the place. Monday morning

15 the equity markets were down 500 points. It was,

16 I think, the worst day of the year.

17 And the asset prices -- and AIG had

18 gone 80 percent owned by the government. On

19 Friday night, as we went home, it looked like

20 Morgan Stanley wouldn't survive until Monday

21 morning.

22 So we were pretty stressed that if we

23 didn't get to the numbers that we had laid out,

24 and again I haven't got those numbers, this was

25 Rich and team working on this, we were going to

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1 DIAMOND - HIGHLY CONFIDENTIAL

2 Q. It may not have been the only one?

3 A. Yeah. But we would have had to or I

4 would not have been able to announce it.

5 Q. Let me show you what has been marked

6 as Exhibit 378. I ask you to look through that

7 document, sir, and let me know whether you

8 recognize it.

9 A. I may have to go back through more,

10 depending where you ask the questions, but I am

11 getting the gist of it.

12 Q. The question is, do you remember

13 seeing it before?

14 A. I'm sure --

15 Q. If not, we will go to the gist.

16 A. No. I'm sure I did. I would have

17 been part of -- did this go to the board meeting?

18 Q. Well, it is entitled "Board Deck" on

19 the cover, so.

20 A. I can't tell you this was the document

21 that came or whether it was a draft. It is

22 impossible. But we should go ahead. It probably

23 was, but I can't be sure.

24 Q. There are some particular pieces that

25 I wanted to ask you about. If you go to the board

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 deck itself --</p> <p>3 A. This looks like it was still in</p> <p>4 preparation phase to me, actually, as opposed to</p> <p>5 actually the deck that went to the board. I don't</p> <p>6 mean to be difficult. Usually we would come out</p> <p>7 with different covering and stuff if it was a</p> <p>8 board document as opposed to in corporation.</p> <p>9 Q. If you would, turn to the executive</p> <p>10 summary and then the board discussion -- it is</p> <p>11 entitled "Board Discussion Materials," and turn to</p> <p>12 the executive summary on page 2 of the document.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 MR. HUME: I am sorry, Bob, can I ask</p> <p>16 one question? There is no Bates number on</p> <p>17 this.</p> <p>18 MR. GAFFEY: I just noticed the same</p> <p>19 thing, and I don't know why. I just this</p> <p>20 moment noticed the same thing. I don't know</p> <p>21 why. But I do know it was marked at</p> <p>22 Mr. Ricci's -- and it has got a Bates</p> <p>23 number -- oh, excuse me, I do know why.</p> <p>24 Let's go off the record and discuss it.</p> <p>25 (Discussion held off the record)</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 MR. GAFFEY: Back on.</p> <p>3 The record should reflect the board</p> <p>4 discussion materials were produced by</p> <p>5 Barclays' counsel in what's called native</p> <p>6 format along with a placeholder which bears</p> <p>7 Bates number BCI-EX-S 00023788 identifying</p> <p>8 the subject, and I think that's the reason</p> <p>9 why there are no Bates numbers on the</p> <p>10 attachment.</p> <p>11 Q. In any event, sir, back at page 2, the</p> <p>12 executive summary. It appears to be a description</p> <p>13 of the transaction being contemplated. Do you</p> <p>14 agree with me?</p> <p>15 A. Yes.</p> <p>16 Q. And in the transaction it says that</p> <p>17 Barclays would hire the staff of the broker/dealer</p> <p>18 and assume a portion of its assets and</p> <p>19 liabilities. Do you see that?</p> <p>20 A. Where is that?</p> <p>21 Q. Third bullet point on the executive</p> <p>22 summary.</p> <p>23 A. I see that.</p> <p>24 Q. Then the second subpoint within that</p> <p>25 bullet point says, "We would acquire 75 billion of</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 assets and liabilities. The business would</p> <p>3 include risk-weighted assets of 13.5 billion."</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. Is the 75 billion dollar number</p> <p>7 attributed to the assets and liabilities an</p> <p>8 accurate description of the deal that was</p> <p>9 contemplated?</p> <p>10 MR. HUME: Objection, lacks</p> <p>11 foundation.</p> <p>12 A. I mean this isn't a deal document.</p> <p>13 This is kind of a setting the context with very</p> <p>14 round, broad numbers, 13 and a half billion in</p> <p>15 RWAs, so if you will notice as you look through</p> <p>16 this, this is a document where every number is</p> <p>17 2 billion, 3 billion, 1 and a half, 75. This is a</p> <p>18 planning document as opposed to a deal document.</p> <p>19 And it is giving at this point the gist of the</p> <p>20 deal that we were contemplating.</p> <p>21 As far as I can tell, this didn't go</p> <p>22 to the board. This was a planning document being</p> <p>23 prepared for the board. Whether it went to the</p> <p>24 board or not, I'm not sure.</p> <p>25 Q. Is the gist that it is telling you</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that the approximate value of the assets to be</p> <p>3 purchased was 75 billion dollars?</p> <p>4 A. I think the gist was in the last</p> <p>5 penultimate bullet, this will be subject to U.S.</p> <p>6 legal process which is unpredictable. Sorry, just</p> <p>7 trying to get a little humor in there.</p> <p>8 Q. That's OK.</p> <p>9 Now that we both had our giggle, can</p> <p>10 we go back to whether the gist of it, as you</p> <p>11 understand it, was approximately 75 billion</p> <p>12 dollars in assets was being purchased?</p> <p>13 A. Well, they are using the 75 billion</p> <p>14 here for what I have described as a pool of assets</p> <p>15 and a pool of liabilities, and it is an</p> <p>16 approximate number.</p> <p>17 Q. So was it your understanding on the</p> <p>18 morning of the 16th that the pool of assets to be</p> <p>19 purchased had an approximate value of 75 billion</p> <p>20 dollars?</p> <p>21 MR. HUME: Objection, asked and</p> <p>22 answered.</p> <p>23 A. I am a bit confused.</p> <p>24 Q. Are you looking for something in the</p> <p>25 exhibits?</p>

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 A. Tuesday?  
3 Q. Yeah, Tuesday, the 16th.  
4 A. That's the estimate used in this  
5 document, is all I can say.  
6 Q. One of the issues, one of the  
7 considerations in the transaction, Mr. Diamond,  
8 was the retention of talent from Lehman, correct?  
9 We have talked about that? You needed at least  
10 some key people to come over?  
11 A. Correct.  
12 Q. To run the business?  
13 A. More than just the key people. Talent.  
14 was very important.  
15 Q. Were any estimates prepared of the  
16 amount that Barclays thought it would need to pay  
17 in bonus for the retained talent?  
18 A. There were estimates, and the  
19 principle -- yes, there were.  
20 Q. You were about to say the principal.  
21 Where was the principal talent?  
22 A. No. The principle of why we would do  
23 that was that in acquiring a business that late in  
24 the year, the business would have accrued  
25 compensation during the year, and that would have

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 people that would be terminated later in the year  
3 as we got through that, but before year end.  
4 So it was compensation broadly defined  
5 as the compensation bill for the Lehman business  
6 that we were acquiring. Of course, no one would  
7 do the deal and say we are going to decide to pay  
8 the compensation at the end of this without it  
9 being part of the accruals in the deal.  
10 Q. Did you ask --  
11 A. I know the number --  
12 Q. Sorry, go ahead. I didn't mean to  
13 interrupt you.  
14 A. No.  
15 Q. Did the number, whatever it was, that  
16 was arrived at for compensation, was it  
17 contemplated that the assets required in the deal  
18 would be sufficient to fund that assumed  
19 liability?  
20 MR. HUME: Objection, vague.  
21 A. I don't understand the terminology  
22 you're using. It was a part of the deal that the  
23 compensation expense would be -- the accrual for  
24 that would be acquired as part of the deal.  
25 My recollection is that number was

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 to be a part of the deal as opposed to  
3 compensation being a responsibility of Barclays.  
4 So there was an attempt made to get a  
5 good estimation and a good accrual as part of the  
6 deal for compensation that was required to keep  
7 the people and talent in place.  
8 Q. Did you have a concept at the time the  
9 deal was agreed as to what that amount would be,  
10 what would be needed?  
11 A. We did. I know the -- yes, we did.  
12 Q. What was your concept?  
13 A. I didn't do any of the detailed work.  
14 And I -- so I'm happy to answer questions, but I  
15 didn't do the financial analysis.  
16 Q. My question is, what's your  
17 understanding of what it was, not how you came to  
18 the number. I know you didn't --  
19 A. Well, it was in all the documents  
20 specifically what it was. And there was an  
21 approximation of what would be required for  
22 compensation for completing this transaction, and  
23 importantly, it would include -- we would have to  
24 make some tough decisions in areas of overlap, and  
25 it would include compensation for some of the

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 right around 2 billion. I wasn't in on the final  
3 document, so it might have varied from that a  
4 little bit, but that was my understanding.  
5 (Exhibit Exhibit 412-A, document Bates  
6 stamped BCI-EX-S 25413 marked for  
7 identification, as of this date.)  
8 Q. Mr. Diamond, I am showing you what we  
9 have marked as Exhibit 412-A, a one-page document  
10 bearing Bates number BCI-EX-S 00025413, an e-mail  
11 from Heidi Smith to you, del Missier, Tara  
12 Callaghan and Allana Reynolds.  
13 Is Heidi Smith your assistant? Is  
14 that a yes? You have to for the reporter --  
15 A. Yes. Sorry. I should have learned by  
16 now.  
17 Q. And Ms. Smith recounts to you, "Bob  
18 and Jerry, Julian Sainty called. He advised that  
19 a senior Lehman's person in London is available to  
20 assist if you are acquiring Lehman's. He said we  
21 would need to act within the next couple of  
22 hours."  
23 Do you recall getting this message  
24 from Ms. Smith?  
25 A. Kind of. I mean now that I see it, I



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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 do, if you know what I mean. I kind of remember</p> <p>3 Julian calling. I'm sure I got it, yeah.</p> <p>4 Q. It is not going to surprise you I need</p> <p>5 you to unwrap a small mystery for me, did you</p> <p>6 learn who the senior Lehman's person was?</p> <p>7 A. I think I did. It was one of the</p> <p>8 European people. So this had to do with -- my</p> <p>9 recollection, which I'm pretty sure was correct,</p> <p>10 at the same time we were trying to complete the</p> <p>11 transaction that has now become known as Long</p> <p>12 Island 2, there was scrambling about the European</p> <p>13 business and it is a really long story of whether</p> <p>14 that was something we would be interested or not</p> <p>15 interested in and this phone call was someone over</p> <p>16 there, if you want the European business, I can</p> <p>17 help you get that.</p> <p>18 Q. Just so I can get this off the table</p> <p>19 and we will move on to something else, let me make</p> <p>20 sure I understand correctly whatever it is this</p> <p>21 person said to you, it had to do with an another</p> <p>22 transaction on the European side, no relation to</p> <p>23 the Long Island deal, correct?</p> <p>24 A. Yes. I am shaking my head I</p> <p>25 apologize, correct.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did there come a time when a release</p> <p>3 was issued describing to the public the deal that</p> <p>4 had been made?</p> <p>5 A. I'm sure.</p> <p>6 Q. Do you recall if you saw the release</p> <p>7 when it was issued?</p> <p>8 A. I'm sure I did.</p> <p>9 Q. Let me show you what has been marked</p> <p>10 previously as Exhibit 344-A. Keep them in a nice</p> <p>11 pile there, done with that.</p> <p>12 344-A, and do you recognize that to</p> <p>13 be a release that was issued on 17 September</p> <p>14 2008 announcing the acquisition of Lehman</p> <p>15 Brothers' North American investment banking</p> <p>16 capital markets business?</p> <p>17 A. It certainly looks like the document</p> <p>18 that went out, yeah.</p> <p>19 Q. Did you ever express any concern to</p> <p>20 anyone about the way the price described in this</p> <p>21 press release was characterized?</p> <p>22 A. Where is the price characterized?</p> <p>23 Help me get to the thing.</p> <p>24 Q. Let me show you a couple of pieces of</p> <p>25 this. In the second paragraph, "Barclays will</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 acquire trading assets with a current estimated</p> <p>3 value of..." Do you see where I am?</p> <p>4 A. Um-hm.</p> <p>5 Q. It describes a current estimated value</p> <p>6 of 72 billion and trading liabilities with a</p> <p>7 current estimated value of 68 billion, both of</p> <p>8 those being in dollar numbers for cash</p> <p>9 consideration of 250 million. That's one piece</p> <p>10 I'll direct your attention to.</p> <p>11 A. Um-hm.</p> <p>12 Q. And then if you look further in at</p> <p>13 page 3, there is a paragraph entitled,</p> <p>14 "Transaction Structure."</p> <p>15 A. Um-hm.</p> <p>16 Q. And in the second paragraph there, you</p> <p>17 see the first paragraph recites the same numbers,</p> <p>18 72, 68, 250 million, and then in the next</p> <p>19 paragraph there is a reference to 1.75 billion</p> <p>20 U.S. paid for the head office building and the</p> <p>21 data centers. Do you see where we are?</p> <p>22 A. Um-hm, yes.</p> <p>23 Q. With those two pieces in mind, did you</p> <p>24 ever express concern to anyone about the manner in</p> <p>25 which the pricing of the deal was described in</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 this press release?</p> <p>3 A. Yes, I do recall doing that.</p> <p>4 Q. Just for the sake of clarity, I am</p> <p>5 going to ask you to go off the record for a</p> <p>6 second.</p> <p>7 (Pause)</p> <p>8 MR. GAFFEY: The record should reflect</p> <p>9 the witness absently is sort of doodling a</p> <p>10 bit on the document in the handwritten notes</p> <p>11 of the first page, a caret next to the</p> <p>12 second paragraph and small square with a dot</p> <p>13 in the middle were added during the</p> <p>14 deposition. I understand that they are of</p> <p>15 no meaning, but I need to explain that in</p> <p>16 case the document is put in.</p> <p>17 Don't make me tell you to put down the</p> <p>18 pen.</p> <p>19 Q. Did you ever express any concern to</p> <p>20 anyone about the way the price was characterized</p> <p>21 in here?</p> <p>22 A. I do think I did, yes.</p> <p>23 Q. What do you recall about that?</p> <p>24 A. When we talked about the headline</p> <p>25 price, which was the amount of cash that we were</p>

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2 paying, I had thought about it as one and  
3 three-quarter billion dollars and that was how  
4 most of the documents that we were working on  
5 here -- and that included the price of the  
6 building and price of the data centers.

7 When I think Chris or Cathy, Chris is  
8 CFO or Cathy as head of corporate  
9 communications began drafting this note, it was  
10 difficult to find that number. In fact, it  
11 might have been, if I recall, impossible or  
12 they broke it into the 250 premium and 1 and a  
13 half for specific properties.

14 And I think the intent was that you  
15 can describe it either way; one way looks like  
16 a better deal, quote/unquote, for the  
17 shareholder, the other looks like a better deal  
18 for Lehman and a more fair representation. And  
19 I recall saying we should really use the one  
20 and three-quarter because that's what we have  
21 been using all along, and it is going to look  
22 like -- it is just a different number, and my  
23 memory is that the one and three-quarter did  
24 end up in here, but not in the beginning.

25 Q. That's why I directed you to the third

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2 page, that's where you find the 1.57?

3 A. To be honest, I prefer it here, I  
4 think that would have been the appropriate way to  
5 represent the transaction, so I was a bit  
6 frustrated and disappointed.

7 Q. Did you express to them your view that  
8 it was important the bankruptcy court see it the  
9 way you described, with the big number up front?

10 A. I don't recall that, but I think  
11 that's how we described it to the bankruptcy  
12 court. So it would be -- what day is this?

13 Q. This is the 17th, Wednesday?

14 A. This is before we went to the  
15 bankruptcy court.

16 Q. Let me add in, because I don't want to  
17 mislead you here, there is a hearing on the 17th.

18 A. Certainly for all those types of  
19 reasons, I felt it would be inelegant to change  
20 the way we were talking about the transaction in  
21 order to make it look better than it was.

22 Q. Did you think it was important in the  
23 release -- in this release which described the  
24 price, either using the big number or not, that  
25 the assumed liabilities also be described?

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2 MR. HUME: Let me object to vagueness  
3 in that question, the phrase is sort of --

4 Q. Let me withdraw that question.

5 You do recall commenting on the  
6 manner in which the price was characterized.  
7 Do you recall commenting on the fact that  
8 neither the 2 billion dollar assumed liability  
9 for compensation or the assumed liability for  
10 contract cures were mentioned in this press  
11 release?

12 A. The only thing that I commented on  
13 that I recall was the headline figure, that's what  
14 I was worried about, and it was an issue of  
15 perception and communications. Again, I think on  
16 the other things, it would be more appropriate for  
17 Rich or someone who was really driving the  
18 transaction. I was thinking more from a corporate  
19 communications point of view and a disclosure  
20 point of view. But the only thing I recall  
21 commenting on was the headline price.

22 Q. You did, though, consider the  
23 assumption of the liabilities for compensation and  
24 contract cure to be part of the consideration  
25 Barclays was giving in the deal apart from this --

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2 A. You are going into a whole different  
3 thing, so close this and put it away?

4 Q. Sure. You --

5 A. So what's the new question?

6 Q. You did consider the assumed  
7 liabilities, the compensation and contract cure to  
8 be part of the consideration that Barclays was  
9 giving in the deal, is that right?

10 MR. HUME: I am going to object to the  
11 vagueness of that question.

12 A. I think I have answered this, but let  
13 me try again. In the pool of assets and pool of  
14 liabilities and what was included and driving  
15 toward accretive capital, Rich was driving that,  
16 and there were things changing all the time  
17 because of the very sad state, the chaos at Lehman  
18 Brothers.

19 In specific, I have already said to  
20 you I would not approve this deal if we did not  
21 have an accrual for compensation because that  
22 wouldn't be appropriate for that compensation  
23 to be paid for by the Barclays shareholders  
24 when the full year of work had been at Lehman.  
25 So of course, we had a -- I don't know why you

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2 are asking again, but of course we had an  
3 accrual for compensation.  
4 Q. I know there was an accrual for  
5 compensation and I know there was an accrual for  
6 contract cures. My question, and maybe I am not  
7 being clear about it, my question is did you  
8 consider the assumption of those accrued  
9 liabilities to be part of the price that Barclays  
10 was paying for what it was buying?  
11 A. You are asking me detailed questions  
12 in the structure of the deal that I think Rich is  
13 better able to answer. I gave you as much  
14 information as I can about the comp and I think in  
15 terms of the pool of assets and pool of  
16 liabilities, that was really Rich's to drive.  
17 Q. When you were making the determination  
18 as to whether you could recommend it to the board  
19 as capital accretive, did you take into account  
20 the assumed liabilities for compensation and for  
21 contract cure?  
22 A. When I recommended this deal to the  
23 board as capital accretive, I took into  
24 consideration every aspect of the deal.  
25 Q. Those aspects include the assumption

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2 see the larger number." Is that a reference to  
3 how the deal is characterized in the press release  
4 or is it a reference to something else?  
5 A. This note was in reference to the  
6 press release that we had just talked about, yes.  
7 Q. So to go back to something I answered  
8 and I think your recollection was not clear or you  
9 didn't have one, do you recall now whether when  
10 you commented on the press release, one of your  
11 concerns was how the bankruptcy court would see  
12 the deal described?  
13 A. I felt that all audiences, including  
14 the bankruptcy court, it was more appropriate to  
15 use the one and three-quarter billion number than  
16 it was the 250 number, so I felt it more broadly  
17 than that, but including the bankruptcy court.  
18 Q. Is there a reason that you referred  
19 not to all audiences but to the bankruptcy court  
20 itself in this e-mail? Is there a reason you  
21 chose to refer to the bankruptcy court and not all  
22 the rest of those audiences?  
23 A. Not that I can think of.  
24 (Exhibit Exhibit 413-A, document Bates  
25 stamped BCI-EX-S 79546 marked for

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 of liabilities for compensation and contract  
3 cures?  
4 MR. HUME: Asked and answered.  
5 A. I answered all aspects of the deal, so  
6 if those were aspects of the deal, yes.  
7 Q. Showing you, Mr. Diamond, what  
8 previously has been marked as Exhibit 341A, an  
9 e-mail chain beginning at the bottom with an  
10 e-mail from you to Chris Lucas, copy Varley, and  
11 Ricci and a chain that follows from Lucas to you,  
12 and again, so you are not misled in any way, the  
13 top e-mail from Lucas to Varley appears to exclude  
14 you.  
15 Could you take a look through that and  
16 tell me if you recall seeing the parts of it that  
17 are to or from you?  
18 A. Sorry, question?  
19 Q. Do you recall seeing --  
20 A. Yes.  
21 Q. Do you remember sending the one that  
22 you sent here at the bottom, yes?  
23 A. I do now that I see it, yes.  
24 Q. And there is a reference in there to,  
25 "It is very important to the bankruptcy court to

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2 identification, as of this date.)  
3 Q. Mr. Diamond, I have put before you  
4 what we have marked as deposition Exhibit 413-A, a  
5 one page document bearing Bates number BCI-EX  
6 00079546. And it appears to be an e-mail exchange  
7 between Archie Cox and you, beginning with a  
8 message from Cox to you and there are others on  
9 here; a response from Michael Evans to Cox and  
10 you; and then a final response from you to Evans,  
11 Cox and Ricci. Do you see that?  
12 A. Yes.  
13 Q. Now, there is a reference in the  
14 original e-mail to something you referred to  
15 before when I asked you if you had spoken to  
16 Mr. McDade about joining Barclays and whether you  
17 had talked about compensation. In sum or essence,  
18 he said a handshake was good enough at that point,  
19 do you recall that testimony?  
20 MR. HUME: Objection, mischaracterizes  
21 the testimony I believe.  
22 A. I think you can go back and hear what  
23 I said or you can reask the question.  
24 Q. Let me reask the question. Do you  
25 recall a time when you were speaking to -- you

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 learned that Bart was in the room with Archie Cox</p> <p>3 and Cox talked to him about signing on with</p> <p>4 Barclays and Bart stuck out his hand and said,</p> <p>5 "I'm done, a handshake is good enough for me," as</p> <p>6 recounted in this e-mail?</p> <p>7 A. This is -- only from this e-mail would</p> <p>8 I know that.</p> <p>9 Q. You have no recollection, apart from</p> <p>10 what you read in this e-mail, about anybody</p> <p>11 talking about a handshake being good enough for</p> <p>12 Bart McDade rather than a written agreement?</p> <p>13 A. I am sorry, I thought you asked me if</p> <p>14 I recalled Archie.</p> <p>15 Q. Let's let me ask another question.</p> <p>16 A. Come on, let's play fair.</p> <p>17 Q. I am playing fair, sir. I don't want</p> <p>18 to take time to read back the testimony --</p> <p>19 A. This is ridiculous.</p> <p>20 MR. GAFFEY: Would you search through</p> <p>21 the time "handshake."</p> <p>22 A. No, I'll answer it.</p> <p>23 Q. No, we will take the time. I don't</p> <p>24 want to be unfair.</p> <p>25 MR. GAFFEY: Find the word</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 "handshake."</p> <p>3 (Record read)</p> <p>4 Q. Mr. Diamond, having had that testimony</p> <p>5 about a handshake read back to you, do you</p> <p>6 recall -- do you recall, again, a discussion where</p> <p>7 Mr. McDade said a handshake would be good enough?</p> <p>8 A. There is a difference between what I</p> <p>9 was testifying to, and I'm happy to answer, which</p> <p>10 is my conversations with Bart, and this is a</p> <p>11 representation of a Lehman lawyer in a room I</p> <p>12 wasn't in.</p> <p>13 So do I have any recollection of this?</p> <p>14 No, I don't, other than the memo from Archie</p> <p>15 and it had nothing to do with me. There was a</p> <p>16 different testimony as I described to get you</p> <p>17 to understand which is my conversations with</p> <p>18 Bart which I have already answered for you.</p> <p>19 Q. When you got this e-mail from Archie</p> <p>20 Cox, did you understand he had had a similar</p> <p>21 conversation with Bart where Bart said --</p> <p>22 referenced that a handshake was good enough? Did</p> <p>23 that conversation take place twice with two</p> <p>24 different Barclays people?</p> <p>25 A. It was a conversation he was relaying</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that Bart had with a Lehman lawyer, not the</p> <p>3 Barclays person. That's the third time I've told</p> <p>4 you.</p> <p>5 Q. You respond at the end of this,</p> <p>6 "Please get me the numbers and contract ASAP. No</p> <p>7 other conversation. Just get to me."</p> <p>8 Do you see that? Why are you</p> <p>9 directing Mr. Evans to have no other</p> <p>10 conversation and just get a written contract to</p> <p>11 you?</p> <p>12 A. It is really simple. The people that</p> <p>13 were going to join from Lehman, the one that would</p> <p>14 be a direct report to me was Bart. So I was</p> <p>15 handling that and I wanted to see the contract</p> <p>16 that it refers to as structuring here so I could</p> <p>17 continue to think through what the appropriate way</p> <p>18 to handle this was. The conversation I had with</p> <p>19 Bart was previous to the conversation here. It</p> <p>20 was during the early morning hours of Tuesday.</p> <p>21 Q. Can I have Exhibit 282-B, please.</p> <p>22 Showing you what has previously been</p> <p>23 marked as Exhibit 282, Mr. Diamond, a letter on</p> <p>24 Barclays Capital letterhead dated September 18,</p> <p>25 2008, addressed to Mr. Herbert McDade III,</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 signed on page 3 by Michael Evans. Have you</p> <p>3 seen that document before?</p> <p>4 A. I don't recall, but I suspect I did.</p> <p>5 Q. Do you recall if, as you had</p> <p>6 instructed, Mr. Evans sent the document -- the</p> <p>7 numbers in the contract to you?</p> <p>8 A. I suspect, with good reason, that this</p> <p>9 is the document that I asked Michael to get to me.</p> <p>10 Q. Do you recall receiving that document?</p> <p>11 Whether it is this one in front of you or not, do</p> <p>12 you recall getting the document?</p> <p>13 A. I don't, but I'm sure I did. It was</p> <p>14 days and days without sleep. I asked Michael very</p> <p>15 clearly in capital letters to get it to me and</p> <p>16 there is a document, so I'm sure it came to me.</p> <p>17 Q. Do you know whether -- did you give</p> <p>18 this document to Mr. McDade?</p> <p>19 A. I did not.</p> <p>20 Q. Did anyone give it to Mr. McDade on</p> <p>21 your instructions?</p> <p>22 A. Not on my instructions.</p> <p>23 Q. Do you know if anyone at Barclays gave</p> <p>24 this document to Mr. McDade?</p> <p>25 A. I would be surprised because Bart</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 worked for me and it would not have gone to him</p> <p>3 without approval from me, I would think. These</p> <p>4 were crazy times and under stress, so my</p> <p>5 understanding is this did not go to Bart because</p> <p>6 Bart and I had already had the conversation</p> <p>7 earlier.</p> <p>8 Q. Bart did for a short time come --</p> <p>9 Mr. McDade did come for a short time and work for</p> <p>10 Barclays after the transaction, is that right?</p> <p>11 A. Bart continued to work for us until</p> <p>12 October, kind of the October, November time frame.</p> <p>13 Q. Did he receive any bonus payments?</p> <p>14 A. He did not.</p> <p>15 Q. Did he receive any severance payments?</p> <p>16 A. Not -- severance is a funny word. So</p> <p>17 I'm only caveating it, there might have been</p> <p>18 something around health insurance or staying on</p> <p>19 healthcare. But I think in the meaning you are</p> <p>20 saying severance no, there was no bonus or</p> <p>21 severance or anything special. I could get caught</p> <p>22 in the technicality, but I think in the principle</p> <p>23 you are asking it, the answer is no, there was no</p> <p>24 additional compensation.</p> <p>25 Q. It is a fair comment. I don't want to</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 tie it just to severance. Did he get any sort of</p> <p>3 departure bonus, severance, noncompete?</p> <p>4 A. No, he did not.</p> <p>5 MR. SCHILLER: Do you have much more?</p> <p>6 MR. GAFFEY: Yes.</p> <p>7 MR. SCHILLER: Can I ask that you</p> <p>8 really try to focus on what's important and</p> <p>9 not take the whole day to ask questions and</p> <p>10 introduce documents? You seem to be</p> <p>11 conducting a deposition that covers the</p> <p>12 universe, as opposed to working with</p> <p>13 whatever is important to you at this point</p> <p>14 in this proceeding at this time, and I might</p> <p>15 ask that you focus on what's important and</p> <p>16 complete your examination.</p> <p>17 You asked for this discovery in order</p> <p>18 to consider whether there are claims and you</p> <p>19 are conducting this like it is some</p> <p>20 five-year lawsuit, you are just going to</p> <p>21 examine someone all day and showing him all</p> <p>22 the things you want and then other things.</p> <p>23 So I would ask that you move on and ask what</p> <p>24 is important to you of this CEO.</p> <p>25 MR. GAFFEY: Can I have document</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 number 338, please.</p> <p>3 Q. Do you recall the time, Mr. Diamond --</p> <p>4 you mentioned before when you spoke with Mark</p> <p>5 Shafir or you -- withdrawn.</p> <p>6 You mentioned before you that you</p> <p>7 learned that Mark Shafir was going to go to</p> <p>8 Citibank and that was in the context of when we</p> <p>9 were talking about whether employment offers</p> <p>10 were being made to Lehman employees. Did there</p> <p>11 come a time when you learned Mr. Shafir</p> <p>12 actually left Lehman during the week that the</p> <p>13 deal was being executed and prior to the</p> <p>14 closing?</p> <p>15 A. No.</p> <p>16 Q. Did you have an understanding of what</p> <p>17 Mr. Shafir's role was on the Lehman team during</p> <p>18 the dealings between Lehman and Barclays?</p> <p>19 A. My understanding was that Mark Shafir</p> <p>20 was working for originally Dick Fuld to try and</p> <p>21 find a buyer for Lehman. I'm not sure I'm</p> <p>22 correct, but that was my understanding.</p> <p>23 Q. That would put us back in the period</p> <p>24 prior to the arrival of Barclays as it were. I am</p> <p>25 in the week starting on Monday the 15th through</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 the closing on the 22nd. What do you know, if</p> <p>3 anything, about Shafir's role and activities</p> <p>4 during that week?</p> <p>5 A. Nothing.</p> <p>6 Q. Was he ever described to you or did</p> <p>7 you come to understand him to be one of the</p> <p>8 principal negotiators for Lehman?</p> <p>9 A. Rich was really managing that. I was</p> <p>10 not in on any of the negotiations, so it was very</p> <p>11 possibly the case, but I wouldn't know.</p> <p>12 Q. Did Rich mention who he was</p> <p>13 negotiating with during that week in his periodic</p> <p>14 reports to you about the progress of the deal?</p> <p>15 A. He may have, but it wasn't memorable.</p> <p>16 Q. We talked a little bit, Mr. Diamond,</p> <p>17 about, from time to time we have talked about the</p> <p>18 clearing agent and I asked you before and told you</p> <p>19 I would come back to the topic about difficulties</p> <p>20 that may have arisen with JP Morgan. Do you have</p> <p>21 any -- could you describe for me the nature of the</p> <p>22 difficulties that arose with JP Morgan near the</p> <p>23 end of the week? Anything in particular?</p> <p>24 A. Is there any specific question you</p> <p>25 have?</p>

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. Yes, it is a general question. Were  
3 there difficulties with -- let me --  
4 A. Difficulties with clearing agents?  
5 Q. Were there difficulties with the  
6 clearing agent that created an obstacle to the  
7 completion of the transaction?  
8 MR. HUME: Objection, vague.  
9 A. You know, I think all of that again is  
10 the responsibility of Rich. I think you have had  
11 a chance to do a deposition with him. I'm  
12 surprised you are asking.  
13 Q. I am looking for your knowledge.  
14 That's why I am asking you.  
15 A. I don't know where to begin or where  
16 to end. Can you narrow that down at all?  
17 Q. I really can't until I get an answer  
18 from you, sir. To your knowledge, were there  
19 issues arising with JPM that presented an obstacle  
20 to the completion of the deal? To your knowledge?  
21 A. The deal completed over the night by  
22 Monday morning, so we had completed a deal. We  
23 found out after that that JP Morgan had removed 7  
24 billion dollars from a custodian account but  
25 technically that was after the deal was signed.

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 says, "Bob Diamond is speaking to JPM about the 7  
3 billion of cash allocated to Barclays in the  
4 triparty last night."  
5 Do you have any -- can you illuminate  
6 me in any way, sir, as to whether you did speak  
7 to JPM about the 7 billion of cash allocated to  
8 Barclays in a triparty on the 18th of  
9 September?  
10 A. What day of the week was that?  
11 Q. That would be the Thursday prior to  
12 closing. The e-mail is sent the 19th, it refers  
13 to last night. That's why I am referring to  
14 Thursday night, the 18th?  
15 A. I don't recall any conversation about  
16 7 billion in cash. I'm -- I don't -- well, I  
17 wasn't on that note, but no, I didn't.  
18 Q. I understand that. I am wondering  
19 whether you could illuminate for me why one person  
20 is writing to another guy saying that?  
21 A. No. Couple of Lehman guys?  
22 Q. Yeah.  
23 A. Then no.  
24 Q. Did anyone on your team bring to your  
25 attention prior to the closing that there was

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2 Q. And was the removal of the 7 billion  
3 dollars from the account something that Barclays  
4 learned only after the closing on September 22?  
5 A. To the best of my knowledge, yes. It  
6 was not discovered until after the closing later  
7 Monday morning.  
8 Q. And apart from that issue that arose  
9 later Monday morning on the 22nd, were there any  
10 other issues with JP Morgan about cash -- that  
11 involved the amount of 7 billion dollars in cash?  
12 MR. HUME: You are asking the witness'  
13 knowledge?  
14 MR. GAFFEY: Yes.  
15 A. The only time the 7 billion in the  
16 custody account was taken -- the only time we knew  
17 it was taken, I'm pretty sure anyone at Barclays,  
18 was after the close.  
19 Q. Did you have a conversation with  
20 anyone at JPM on Friday the 19th concerning a 7  
21 billion dollar issue?  
22 A. No.  
23 Q. Let me show you what has previously  
24 been marked as Exhibit 299. It is an e-mail from  
25 Dan -- from Paolo Tonucci to Dan Flemming and it

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2 difficulties with JP Morgan about the transferring  
3 of assets that presented obstacles to the deal?  
4 MR. HUME: Objection, vague.  
5 A. There were -- not that presented  
6 obstacles to the deal, no.  
7 Q. So is it fair to say --  
8 A. I know there was a lot of things that  
9 were resolved during the night Sunday, but I  
10 wasn't there.  
11 Q. My question goes to whatever knowledge  
12 of the issues there were. Did you get involved in  
13 any issue with JPM before the afternoon of the  
14 closing when it was learned that JPM had removed 7  
15 billion dollars from an account?  
16 A. I had a call from Heidi Miller when a  
17 repo that was on with JP Morgan, a day-to-day repo  
18 wasn't renewed, where she was surprised it wasn't  
19 renewed. And I kind of took her through the  
20 reasons why we didn't need to renew it and it was  
21 a day-to-day repo. And there was a second  
22 interaction on Friday evening I think, as we were  
23 preparing all of the Fed repo transfers, that very  
24 big, 45 billionish repo, where I spoke with Gerard  
25 LaRocca and I think Rich were on the phone with me

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 and Jonathan Hughes and on the phone for JP Morgan</p> <p>3 were Steve Cutler and Frank Bisignano and Bill</p> <p>4 Winters and Heidi Miller. And the two things that</p> <p>5 had come up then were that I had had knowledge --</p> <p>6 that I had committed to JP Morgan that we would</p> <p>7 keep rolling the repo and we discussed that and I</p> <p>8 asked Heidi to please clarify for Bill Winters and</p> <p>9 Steve Cutler and Frank Bisignano that she and I</p> <p>10 never had a conversation until it rolled off, it</p> <p>11 was the first time we had ever talked, and she</p> <p>12 recanted her story that I had committed and said</p> <p>13 Bob's right actually, he didn't, I still think he</p> <p>14 should have, but you didn't.</p> <p>15 The second thing we discussed is how</p> <p>16 were we going to transact such a large settlement</p> <p>17 so that we could open on Monday morning, for us</p> <p>18 stepping into the Fed's position, and through a</p> <p>19 long series of events, the decision I made was</p> <p>20 that if someone has to send the money first and</p> <p>21 then the securities or the securities first and</p> <p>22 then the money, if I had Bill Winters' assurance</p> <p>23 with his chief legal counsel there and with Frank</p> <p>24 and with Heidi that JP Morgan stood behind</p> <p>25 guaranteeing that they would complete the</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 transaction, that I would authorize our people to</p> <p>3 send the money first and we all agreed on that on</p> <p>4 the phone call Friday night.</p> <p>5 I think that was the last conversation</p> <p>6 I had. I had many conversations with Rich.</p> <p>7 I had a conversation Sunday night with</p> <p>8 Jamie Dimon who called me as Rich and team and</p> <p>9 JP Morgan and team were going into the</p> <p>10 negotiations that lasted most of the night</p> <p>11 where I assured Jamie that Rich could act on my</p> <p>12 behalf and he assured us that Frank Bisignano</p> <p>13 could act on their behalf and we would get</p> <p>14 something signed that night. So I relayed that</p> <p>15 to Rich and Rich executed during the night.</p> <p>16 But I assured him that Rich had my authority to</p> <p>17 act.</p> <p>18 MR. SCHILLER: Let me try to help you.</p> <p>19 Mr. Diamond, look at this screen.</p> <p>20 MR. GAFFEY: Are you going to question</p> <p>21 your witness now?</p> <p>22 MR. SCHILLER: I am going to help you</p> <p>23 clarify something.</p> <p>24 MR. GAFFEY: I haven't asked for help.</p> <p>25 If you want to object, instead of Hamish, go</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 ahead. But nobody has invited you to</p> <p>3 interrogate the witness. You get your</p> <p>4 chance at the end. You don't do this now.</p> <p>5 You know you don't do this now. This is a</p> <p>6 violation.</p> <p>7 MR. SCHILLER: I am just trying to</p> <p>8 help you get this done in a practical way.</p> <p>9 MR. GAFFEY: When I need help, believe</p> <p>10 me, I will be the first guy to speak up.</p> <p>11 MR. SCHILLER: There is an error in</p> <p>12 the transcript. I just just trying to clear</p> <p>13 it up.</p> <p>14 Q. Did the 7 billion dollar issue get</p> <p>15 resolved, the one you learned about or Barclays</p> <p>16 learned about after the closing on Monday the</p> <p>17 22nd?</p> <p>18 MR. HUME: I want to object to the --</p> <p>19 I understand, I understand.</p> <p>20 I thought it might be vague in terms</p> <p>21 of what you were just talking about and the</p> <p>22 7 billion might be vague, so I am objecting</p> <p>23 to that.</p> <p>24 Q. The, issuance about the money being</p> <p>25 taken out of the account, did that issue get</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 resolved?</p> <p>3 A. There was ultimately an agreement made</p> <p>4 between ourselves and JP Morgan and the Fed to</p> <p>5 draw a line under it and.</p> <p>6</p> <p>7 Move on., I am sorry, I didn't hear that.</p> <p>8 Draw a line under it and move on. And I'm not</p> <p>9 sure -- I don't know what you mean when you say</p> <p>10 draw a line under it and move on.</p> <p>11 A. A settlement.</p> <p>12 Q. A settlement was reached, when did</p> <p>13 that occur?</p> <p>14 A. Months later.</p> <p>15 Q. Do you have an understanding, again,</p> <p>16 30,000-foot view, what the terms of that</p> <p>17 settlement were?</p> <p>18 A. I do.</p> <p>19 Q. Can you describe them to me?</p> <p>20 A. The 7 billion in cash that was taken</p> <p>21 illegally from our custody account was -- we ended</p> <p>22 up settling for something significantly less. I</p> <p>23 think the exact amount you can get from someone, I</p> <p>24 haven't got testimony off the top of my head but</p> <p>25 it was significantly less.</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 MR. GAFFEY: Let's take a five-minute</p> <p>3 break.</p> <p>4 (Recess)</p> <p>5 Q. Mr. Diamond, I placed before you, at</p> <p>6 the top of the pile, what was previously marked as</p> <p>7 deposition Exhibit 343-A on Barclays letterhead</p> <p>8 entitled "Barclays PLC Announcement." Take the</p> <p>9 time to look through that and tell me whether you</p> <p>10 have seen the document before?</p> <p>11 A. I have not.</p> <p>12 Q. Do you recall on Wednesday, 17</p> <p>13 September 2008 attending a conference with</p> <p>14 journalists about the deal?</p> <p>15 A. I don't.</p> <p>16 Q. Just for completeness then, let me</p> <p>17 direct your attention -- you will see in the</p> <p>18 lower, left-hand corner, it has the page numbers,</p> <p>19 1 of 18, 2 of 18, I need you to take a look at --</p> <p>20 actually, it is not journalists. Do you recall</p> <p>21 attending an analysts call?</p> <p>22 A. I do.</p> <p>23 Q. Looking through this document, does it</p> <p>24 reflect the analyst call that you attended on 17</p> <p>25 September 2008?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sure it does. I haven't read it,</p> <p>3 but it looks like a transcript of that meeting.</p> <p>4 Q. We can take the time if you like, but</p> <p>5 I have one question and answer that I want ask you</p> <p>6 about.</p> <p>7 A. Why don't we try that and if I need to</p> <p>8 read it, I can do that.</p> <p>9 Q. Fine. Page 3 of 18, the question and</p> <p>10 answer session and the questions that follow are</p> <p>11 being asked by Michael Trippett, Oriel Securities,</p> <p>12 that's just for context.</p> <p>13 There is a further question by Mike</p> <p>14 which I'll read into the record, "Yes, the</p> <p>15 second question was just trying to get a sense</p> <p>16 of good assets, bad assets and impairments that</p> <p>17 would have been already taken either through</p> <p>18 the P&amp;L or AFS on the assets that you are</p> <p>19 acquiring," and then John Varley says, "Let me</p> <p>20 ask Chris to comment and, Bob, you may want to</p> <p>21 add."</p> <p>22 If you -- your answer is reflected on</p> <p>23 page 4, I believe, where Mr. Varley asks</p> <p>24 anything you want to add. And you make a</p> <p>25 reference in there where you say, "First and</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 foremost, as Chris said, we got to choose which</p> <p>3 inventory came with the deal."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Was there at any point in the</p> <p>7 transaction, from the time it was agreed until the</p> <p>8 time it closed where Barclays did not have -- did</p> <p>9 not get to choose which inventory came with the</p> <p>10 deal?</p> <p>11 A. I think, as I had explained to you --</p> <p>12 and Friday was probably a good example -- there</p> <p>13 was a number of times when Lehman couldn't</p> <p>14 substantiate or couldn't locate, so I think it is</p> <p>15 fair to say that we had to approve as opposed to</p> <p>16 choose in some cases. In other words, some of the</p> <p>17 things that we would like weren't able to be</p> <p>18 located or, in fact, weren't there or the</p> <p>19 valuations were wrong.</p> <p>20 The context here is to differentiate</p> <p>21 it from Long Island 1, which was, by and large,</p> <p>22 the entire balance sheet of Lehman Brothers. So</p> <p>23 that's the context which is it is a smaller</p> <p>24 portion, it is more related to the businesses as</p> <p>25 opposed to, for example, Japanese equities or</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 commercial real estate from Hong Kong.</p> <p>3 Q. So as I understand it, in Long Island</p> <p>4 2, you could pick and choose because you're taking</p> <p>5 less than the whole, yes?</p> <p>6 A. Yes.</p> <p>7 Q. And were you able to pick and choose</p> <p>8 all the way through or was there -- let me</p> <p>9 rephrase.</p> <p>10 At any point, was there a point where</p> <p>11 Barclays was required to take assets it did not</p> <p>12 want?</p> <p>13 A. I wasn't close enough to the -- I</p> <p>14 wasn't part of the team that was choosing the</p> <p>15 assets, so I couldn't say.</p> <p>16 MR. GAFFEY: I don't have anything</p> <p>17 further.</p> <p>18 EXAMINATION BY</p> <p>19 MR. MAGUIRE:</p> <p>20 Q. Mr. Diamond, my name is Bill Maguire</p> <p>21 at the law firm of Hughes Hubbard &amp; Reed and I</p> <p>22 represent the trustee of the Estate of Lehman</p> <p>23 Brothers.</p> <p>24 You testified a little earlier about</p> <p>25 the public disclosure by Barclays, that large</p>



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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 thick document with 2008 accounts. I will</p> <p>3 represent to you -- you are feel free to look</p> <p>4 at it if you want -- but there is a reference</p> <p>5 there to restating the acquisition accounting.</p> <p>6 I'm just directing your attention to that. Are</p> <p>7 you with me?</p> <p>8 A. Yes.</p> <p>9 Q. Have you had any discussions with</p> <p>10 anyone --</p> <p>11 A. Where is it in here?</p> <p>12 Q. You will see it at -- that large</p> <p>13 document, The results marked Exhibit 22.</p> <p>14 MR. HUME: Which page is it, Bill?</p> <p>15 MR. MAGUIRE: Page 95.</p> <p>16 Q. You don't need to look at this for the</p> <p>17 purpose of my questions, but feel free if you</p> <p>18 wish, sir.</p> <p>19 A. I do.</p> <p>20 MR. HUME: Could you direct us to</p> <p>21 where that is stated.</p> <p>22 Q. Sure. Sir, I will direct your</p> <p>23 attention to note 11. See there is a reference</p> <p>24 under A to Lehman Brothers' North American</p> <p>25 businesses?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. Um-hm.</p> <p>3 Q. And if you go down four paragraphs</p> <p>4 down, you will see a paragraph that begins, "The</p> <p>5 initial accounting for the acquisition." Are you</p> <p>6 with me?</p> <p>7 A. I see the sentence, yes.</p> <p>8 Q. If you look at the last sentence of</p> <p>9 that paragraph, you will see a reference to a</p> <p>10 restatement.</p> <p>11 MR. HUME: I am sorry, Bill, which</p> <p>12 paragraph?</p> <p>13 Q. The fourth paragraph down starts, "The</p> <p>14 initial accounting for the acquisition," and the</p> <p>15 last sentence says, "Any such revisions must be</p> <p>16 effected," and it continues.</p> <p>17 MR. HUME: I see, thank you.</p> <p>18 MR. MAGUIRE: Are we all together?</p> <p>19 MR. HUME: Sorry, thank you.</p> <p>20 A. I don't know if we are all together</p> <p>21 but I see where you --</p> <p>22 Q. That's a good start. Let me put it</p> <p>23 that way.</p> <p>24 Have you had any discussions with</p> <p>25 anyone about such a restatement?</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. Have I, Bob Diamond?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. Are you aware whether Barclays is</p> <p>6 making such a restatement?</p> <p>7 A. I think you can read here that this is</p> <p>8 very technical accounting, that there is an</p> <p>9 initial accounting, which has been determined only</p> <p>10 provisionally, and as more information and more</p> <p>11 certainty comes in and one gets to a pretty</p> <p>12 certain date. This looks like pretty standard</p> <p>13 accounting. I'm not sure what the question is.</p> <p>14 Q. Are you aware there is a restatement</p> <p>15 at Barclays --</p> <p>16 A. I'm aware of this paragraph, that is</p> <p>17 all I can tell you.</p> <p>18 Q. Beyond that paragraph, you have no</p> <p>19 personal knowledge?</p> <p>20 A. One way or the other. It is not</p> <p>21 something that I would be involved in.</p> <p>22 Q. And you had no discussions with any of</p> <p>23 your direct reports concerning any restatement by</p> <p>24 Barclays of the accounting for this acquisition?</p> <p>25 A. I can't answer a general question like</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that. There are accounting issues that come up</p> <p>3 all the time at Barclays around a lot of things</p> <p>4 and I have a lot of conversations. If you have</p> <p>5 something specific, you should ask me. I can in</p> <p>6 no way answer a question about the most strategic</p> <p>7 and most dangerous transaction in the history of</p> <p>8 the financial markets and say I have never had a</p> <p>9 conversation on the accounting.</p> <p>10 Q. My question is only to the best of</p> <p>11 your recollection. Do you have any recollection</p> <p>12 of discussing a restatement of the accounting with</p> <p>13 anyone?</p> <p>14 A. I'm sure I have had many discussions</p> <p>15 about the accounting.</p> <p>16 Q. And --</p> <p>17 A. If you want to ask me about a specific</p> <p>18 one, I'm happy to answer. I'm sure I have had</p> <p>19 many, many conversations. So my answer to you is</p> <p>20 the accounting for Barclays Capital, which now</p> <p>21 includes this, has a lot of accounting entries and</p> <p>22 I'm sure I have discussed many, many of them.</p> <p>23 Q. With whom do you discuss, have you had</p> <p>24 discussions concerning the accounting for the</p> <p>25 acquisition?</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. I would say it differently. I have</p> <p>3 had discussions about accounting in Barclays</p> <p>4 Capital of which the acquisition is a part with my</p> <p>5 staff at the finance committee on a regular basis.</p> <p>6 Q. And who on your staff is responsible</p> <p>7 for that accounting?</p> <p>8 A. The accounting in Barclays Capital</p> <p>9 reports up to the chief financial officer, Patrick</p> <p>10 Clackson, and Patrick reports to Rich Ricci, the</p> <p>11 chief operating officer.</p> <p>12 Q. Taking Mr. Ricci and Mr. Clackson,</p> <p>13 have you had discussions with either of those</p> <p>14 gentlemen concerning a restatement of the</p> <p>15 acquisition accounting?</p> <p>16 A. I've had numerous conversations since</p> <p>17 this acquisition on all aspects of accounting at</p> <p>18 Barclays Capital -- excuse me, I almost said</p> <p>19 Barclays Group. You would have to be more</p> <p>20 specific to ask -- I think the terminology of</p> <p>21 acquisition accounting is something that flows</p> <p>22 into a lot of other things. I would be really</p> <p>23 happy to help you if you could ask something</p> <p>24 specific because the answer is I talk about</p> <p>25 accounting issues all the time.</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me ask you to focus on the gain on</p> <p>3 the acquisition here. You see that number is</p> <p>4 specifically set forth on page 95?</p> <p>5 A. On this date?</p> <p>6 Q. Yeah.</p> <p>7 A. As of this date.</p> <p>8 Q. Exactly. Have you had any discussion</p> <p>9 with Mr. Ricci or Mr. Clackson about revising the</p> <p>10 amount of that gain?</p> <p>11 A. I think what it says here -- do you</p> <p>12 see the paragraph?</p> <p>13 Q. Yeah.</p> <p>14 A. That revisions can happen for 12</p> <p>15 months, with changes in valuation and all that.</p> <p>16 Q. Sure. My question is what discussions</p> <p>17 have you had with Mr. Clackson and Mr. Ricci</p> <p>18 concerning revising that number?</p> <p>19 MR. HUME: Objection, asked and</p> <p>20 answered.</p> <p>21 A. I've answered it about five times.</p> <p>22 Q. I'm just asking you to tell me what</p> <p>23 those discussions were.</p> <p>24 MR. HUME: Objection, vague.</p> <p>25 A. I don't know what you're asking other</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 than I have conversations about the financials and</p> <p>3 accounting at regular meetings with them all the</p> <p>4 time about everything at Barclays Capital. I</p> <p>5 don't have anything specific to relay to you,</p> <p>6 unless you could ask a more specific question.</p> <p>7 Q. What I am asking you now specifically</p> <p>8 is, with respect to the number, the gain, have you</p> <p>9 had any discussions with anyone about revising</p> <p>10 that specific number?</p> <p>11 A. I am just going to stick to my answer,</p> <p>12 we deal with accounting issues all the time and if</p> <p>13 there were any revisions that were to come up</p> <p>14 through the finance committee and I would have</p> <p>15 been a part of those.</p> <p>16 Q. Do you recall any discussion with Mr.</p> <p>17 Ricci specifically on the subject of disclosing a</p> <p>18 different gain?</p> <p>19 A. Without more specificity, I can't</p> <p>20 think of any specific conversations.</p> <p>21 Q. Do you recall any specific number that</p> <p>22 you discussed with Mr. Ricci concerning --</p> <p>23 A. Again, without more specific inquiry</p> <p>24 than this general line of questioning, because</p> <p>25 part of my job is the financials. I can't give</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 you a specific recollection without a more focused</p> <p>3 question.</p> <p>4 Q. Has Mr. Clackson --</p> <p>5 A. I guess that's to say I don't have any</p> <p>6 specific recollection of a specific conversation</p> <p>7 unless you tell me what the conversation was.</p> <p>8 Q. Did Mr. Clackson advise you that</p> <p>9 Barclays would be revising its gain upwards by an</p> <p>10 amount of approximately 400 million?</p> <p>11 A. There were financial issues that come</p> <p>12 up every week at our finance committee that we</p> <p>13 deal with. It's very possible that issues around</p> <p>14 this came up. I don't have any specific numbers</p> <p>15 in mind.</p> <p>16 Q. Do you recall generally a ballpark</p> <p>17 that Mr. Clackson gave you?</p> <p>18 A. I don't have a specific or a general,</p> <p>19 but good try.</p> <p>20 Q. You described earlier how you worked</p> <p>21 with Mr. Ricci and how you understood that he had</p> <p>22 the authority that you had from the board in</p> <p>23 effectuating this transaction, do you recall</p> <p>24 generally that testimony?</p> <p>25 A. No. But --</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me step back then and ask you what</p> <p>3 was the authority that you had from the board to</p> <p>4 do this transaction?</p> <p>5 MR. HUME: Object to the extent it</p> <p>6 calls for a legal conclusion.</p> <p>7 A. I think the board had the authority.</p> <p>8 I didn't have the authority from the board.</p> <p>9 Q. Did you get any authority from the</p> <p>10 board in connection with this transaction?</p> <p>11 A. I actually don't know how to answer</p> <p>12 it. The board is the only authority. So I</p> <p>13 present to the board and the board approves. Does</p> <p>14 that make sense to you?</p> <p>15 Q. Yes.</p> <p>16 A. So don't ask me again about authority</p> <p>17 because the board decides, I don't.</p> <p>18 Q. Did you give Mr. Ricci any authority</p> <p>19 in connection with this transaction?</p> <p>20 A. I gave Mr. Ricci a lot of</p> <p>21 responsibility which then reported in to me and</p> <p>22 reported in to the board, who -- reported actually</p> <p>23 into John and then to the board. So I gave him</p> <p>24 quite a bit of responsibility.</p> <p>25 Q. Did you have any authority from the</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 board to provide any or to agree to any</p> <p>3 unconditional guarantee of Lehman liabilities?</p> <p>4 MR. HUME: Objection, vague.</p> <p>5 A. I have no idea what you're talking</p> <p>6 about.</p> <p>7 Q. Was there a time when you understood</p> <p>8 that Lehman wanted you, wanted Barclays to step</p> <p>9 into the shoes -- to assume all its liabilities?</p> <p>10 A. On what date?</p> <p>11 Q. At any date?</p> <p>12 A. No recollection.</p> <p>13 Q. Was there an occasion when Barclays</p> <p>14 sought a waiver from the FSA?</p> <p>15 A. For?</p> <p>16 Q. To waive a requirement of a</p> <p>17 shareholder vote?</p> <p>18 A. You're referring to the previous</p> <p>19 transaction?</p> <p>20 Q. In connection with any Lehman</p> <p>21 transaction, did Barclays ask the FSA to waive a</p> <p>22 requirement for a shareholder vote?</p> <p>23 A. There were two very different</p> <p>24 transactions and to be fair, I feel that's</p> <p>25 inappropriate and broad.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Are you talking about the first</p> <p>3 transaction or the second? If you want to go</p> <p>4 through both, I will try and go through both,</p> <p>5 but they were very different in nature and</p> <p>6 different in degree and kind.</p> <p>7 Q. I don't want to confuse two different</p> <p>8 transactions. I am asking about whether in</p> <p>9 connection with either transaction there was any</p> <p>10 occasion in which a request was made for a waiver</p> <p>11 of a shareholder vote?</p> <p>12 A. From?</p> <p>13 Q. The FSA?</p> <p>14 A. Not my request that I can recall. The</p> <p>15 FSA -- I don't think there ever a situation came</p> <p>16 up where the FSA would have required a shareholder</p> <p>17 vote. So if there is something more specific, I</p> <p>18 will try and answer, but I have no recollection of</p> <p>19 a situation where we would have needed to go to</p> <p>20 the FSA for their approval to forgo a shareholder</p> <p>21 vote.</p> <p>22 Q. You're not aware of any such request</p> <p>23 having been made by anyone at Barclays to anyone</p> <p>24 at the FSA?</p> <p>25 A. I think if you read it back, I was</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 referring to me, which I thought was the question.</p> <p>3 Q. That's fine. When you say referring</p> <p>4 to me, you are not aware of whether anyone other</p> <p>5 than you made such a request at the FSA?</p> <p>6 A. That's a different question. Let me</p> <p>7 make sure I think it through.</p> <p>8 I don't recall any situation where I</p> <p>9 or anyone else at Barclays -- although things</p> <p>10 could have happened without my knowledge, but I</p> <p>11 wasn't aware -- where they would have requested</p> <p>12 in the spirit of the Lehman transaction the FSA</p> <p>13 to waive a shareholder vote. There was so many</p> <p>14 that went on, I hope I'm not forgetting</p> <p>15 something that -- but I can't, I can't think of</p> <p>16 it.</p> <p>17 Q. You mentioned in your testimony at one</p> <p>18 point that Lehman was under attack from their</p> <p>19 clearing agents?</p> <p>20 A. I don't think I used the word</p> <p>21 "attack."</p> <p>22 Q. Well, the record will stand. Did you</p> <p>23 understand that Lehman had some issues with its</p> <p>24 clearing agents?</p> <p>25 A. I didn't know anything about issues,</p>

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2 no.

3 Q. Did you understand that the clearing

4 agents expressed concern about their exposure to

5 Lehman during the week of September -- the week

6 that we have been talking about, week ending

7 Friday September 19?

8 A. I didn't have any knowledge of

9 Lehman's interaction with their clearing agents.

10 I suspect some of the staff did, but I didn't.

11 Q. Did you ever hear that the Depository

12 Trust Clearing Corporation had expressed concern

13 about its exposure to Lehman?

14 A. I don't recall myself being informed

15 of that, no.

16 Q. Did you ever understand that the DTCC,

17 Depository Trust Clearing Corporation had

18 requested that Barclays step into the shoes of

19 Lehman and assume all of Lehman's liabilities to

20 the DTCC?

21 A. There were many, many organizations,

22 very anxious that week, and there were many

23 organizations that, it was my kind of broad

24 understanding, were coming to us and that's why we

25 were so conscious that there was a very short

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2 A. I don't recall any conversation with

3 the board on that.

4 Q. What about with respect to the OCC,

5 did you ever get authority from the board to enter

6 into or authorize anyone to assume --

7 A. That's nothing that I recall.

8 Q. Let me finish the question so we have

9 a clear record -- to assume all the liabilities of

10 Lehman to the Options Clearing Corporation or OCC?

11 A. Same answer.

12 Q. Did you ever give Mr. Ricci that same

13 authority?

14 A. So your last question was did I

15 request it from the board?

16 Q. Did the board give you that authority,

17 and my question to you now is did you give such

18 authority to Mr. Ricci?

19 A. Your question is without authority

20 from the board would I have given it to Rich? No

21 recollection of the situation.

22 Q. Did Mr. Ricci have any discussion --

23 let me focus you specifically -- and feel free to

24 look at the calendar if you want -- but on Friday

25 the 19th of September -- are you with me?

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2 period of time. I don't recollect any specific

3 conversations, but they may have happened, very

4 well may have happened. I don't recall them

5 happening with me for sure. But that doesn't mean

6 they didn't happen.

7 Q. Did you --

8 A. I am aware that there was chaos in the

9 markets triggered by the Lehman bankruptcy and

10 that chaos had a huge impact on Lehman.

11 Q. Did you ever authorize Mr. Ricci or

12 anyone else to enter into an agreement whereby

13 Barclays would assume all Lehman's liabilities to

14 any clearing agency?

15 A. If you have one in particular --

16 Q. DTCC?

17 A. I don't recall. Or I have no

18 recollection, I think is a better way to say it.

19 Q. Did you have authority from the board

20 to assume all of the liabilities of Lehman to the

21 DTCC?

22 A. Hypothetically, if I wanted to use it,

23 are you saying did I have that authority?

24 Q. Had the board given you that

25 authority?

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2 A. Am I with you?

3 Q. Yes, do you understand what I am

4 saying?

5 A. Yes, I understand Friday is the 19th.

6 Q. Just focusing on that day, do you

7 recall any discussion with Mr. Ricci about blowing

8 up the trade?

9 A. What do you mean by blowing up the

10 trade?

11 Q. Do you recall Mr. Ricci using those

12 words? Or more specifically, do you recall him

13 telling you that he would not blow up this trade

14 by being a pig?

15 A. I recall many times on Friday where we

16 were considering whether or not we could complete.

17 I don't recall specifically the phraseology

18 "blowing up" as not completing, but I suspect

19 that's what it would have done and there was a

20 high degree of tension. So it is possible slime

21 was used.

22 But in answer to your question, there

23 were many times on Friday when I didn't think

24 we would get the transaction completed and Rich

25 didn't think we would get a transaction, for

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 the things we talked about.</p> <p>3 Q. When you say Rich, you are referring</p> <p>4 to Mr. Ricci?</p> <p>5 A. Yes.</p> <p>6 Q. Did Mr. Ricci advise you that he had</p> <p>7 told anyone at Lehman that he would not blow up</p> <p>8 the deal by being a pig?</p> <p>9 A. I don't recall any conversation like</p> <p>10 that, but I can assure you that if -- "pig" infers</p> <p>11 what? So I don't recall a conversation where</p> <p>12 "pig" was used.</p> <p>13 Q. In your discussions with Mr. Ricci on</p> <p>14 Friday, you understood that he was attempting to</p> <p>15 get additional assets from Lehman into the sale?</p> <p>16 A. What I understood was that Lehman was</p> <p>17 trying to find assets because other assets, in</p> <p>18 terms of the frame of the deal, couldn't be</p> <p>19 located or weren't the value that they thought, so</p> <p>20 I was aware that Lehman was scrambling for assets</p> <p>21 and wouldn't be able to complete the deal without</p> <p>22 them.</p> <p>23 Q. Did you understand that Mr. Ricci had</p> <p>24 spoken with Mr. McDade about getting additional</p> <p>25 assets?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. Rich was executing, so in your first</p> <p>3 question, I was aware that Lehman was scrambling</p> <p>4 to find assets and I was aware that Bart was part</p> <p>5 of the Lehman team doing it, but I have no</p> <p>6 particular -- there was no particular conversation</p> <p>7 that I was aware of with Bart and Rich that I</p> <p>8 recall. I was in and out of many conference</p> <p>9 rooms. This is being run, managed by Rich, so I</p> <p>10 was not part of any conversation where the assets</p> <p>11 were going to come from other than being in and</p> <p>12 out of conference rooms and hearing some of it and</p> <p>13 knowing what the objective was.</p> <p>14 Q. Do you understand at some stage a</p> <p>15 number of people left to go to a bankruptcy court</p> <p>16 hearing that was commencing that afternoon?</p> <p>17 A. I do remember that.</p> <p>18 Q. I am going to ask you now about the</p> <p>19 period up until the time when people left to go</p> <p>20 down to the bankruptcy court. Do you understand</p> <p>21 that?</p> <p>22 A. Um-hm, yes.</p> <p>23 Q. In the period up to that, did Mr.</p> <p>24 Ricci inform you that he had been successful in</p> <p>25 obtaining additional assets from Lehman?</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. Right until the 11th hour, right until</p> <p>3 the 59th minute, we were unsure if we would get</p> <p>4 the people required from Lehman Brothers to the</p> <p>5 bankruptcy court -- because it was a Lehman</p> <p>6 Brothers presentation to the bankruptcy court, not</p> <p>7 Barclays, and it was their presentation on the</p> <p>8 deal.</p> <p>9 So much so, in fact, I think that they</p> <p>10 took the tube, not a car, because the traffic</p> <p>11 was so bad and they wouldn't have gotten there</p> <p>12 on time, so it was right until the last minute</p> <p>13 and there did come a point, I can't recall</p> <p>14 when, when we signed off that the deal that was</p> <p>15 being presented by Lehman was substantially the</p> <p>16 deal. But it was a Lehman presentation, so I</p> <p>17 wasn't a part of it.</p> <p>18 Q. When you say it was substantially the</p> <p>19 deal, what do you mean?</p> <p>20 A. I didn't mean to infer anything, but</p> <p>21 at some point Lehman went down and made a</p> <p>22 presentation on the transaction and presented it</p> <p>23 to the judge. But it was a Lehman presentation,</p> <p>24 not a Barclays presentation.</p> <p>25 Q. How did you hear about the</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 presentation?</p> <p>3 A. I didn't really.</p> <p>4 Q. Did you -- did anybody tell you about</p> <p>5 the presentation?</p> <p>6 A. I'm not sure what you mean by the</p> <p>7 presentation? Did I hear it, listen to it?</p> <p>8 Q. Anybody tell you what Lehman had said</p> <p>9 about the deal, how Lehman had described the deal</p> <p>10 to the bankruptcy judge?</p> <p>11 A. I didn't go to the presentation.</p> <p>12 Q. Did anybody tell you how Lehman had</p> <p>13 presented the deal to the bankruptcy judge?</p> <p>14 A. I'm sure there were reports. I don't</p> <p>15 recall the specifics to them.</p> <p>16 Q. Did anyone tell you that the judge had</p> <p>17 been told that cash was excluded from the deal?</p> <p>18 A. As I said, I wasn't at the deal and I</p> <p>19 have no recollection of any reports back, so --</p> <p>20 Q. So you don't recall anyone ever</p> <p>21 telling you that?</p> <p>22 A. I didn't hear the Lehman presentation.</p> <p>23 I think I will leave it at that.</p> <p>24 Q. No, I am not asking you about what you</p> <p>25 heard at the bankruptcy court. I understand you</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 weren't there. My question is did anyone on your</p> <p>3 team, anyone at Barclays tell you that the judge</p> <p>4 had been told that cash was excluded from the</p> <p>5 deal?</p> <p>6 A. I didn't know any of the details of</p> <p>7 the presentation, only summary, so, no, I didn't</p> <p>8 have any details of the conversations.</p> <p>9 Q. When you say the summary, to what are</p> <p>10 you referring?</p> <p>11 A. The framework of the deal which goes</p> <p>12 back to some of the things that we talked about</p> <p>13 earlier that there was a headline price, there</p> <p>14 were a series of assets and a series of</p> <p>15 liabilities and there was the commitment that it</p> <p>16 would be capital accretive to the best of our</p> <p>17 knowledge.</p> <p>18 Q. Who from your team talked to you about</p> <p>19 what had been said at the bankruptcy court</p> <p>20 hearing?</p> <p>21 A. I think I just said, I didn't get a</p> <p>22 report on what was said.</p> <p>23 Q. Did you have any discussion with</p> <p>24 Mr. Klein about the bankruptcy court hearing?</p> <p>25 A. I don't recall any discussion. It was</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 the e-mail that we saw earlier but I don't recall</p> <p>3 any discussion.</p> <p>4 Q. Did Mr. Klein tell you that the judge</p> <p>5 had been told that cash was excluded from the</p> <p>6 deal?</p> <p>7 A. I think I answered that.</p> <p>8 MR. HUME: Objection, asked and</p> <p>9 answered.</p> <p>10 Q. Do you have any recollection of</p> <p>11 Mr. Klein telling you that?</p> <p>12 A. I think I answered that.</p> <p>13 Q. You have no such recollection?</p> <p>14 A. I think I answered that.</p> <p>15 Q. I want to know, sir, is that your</p> <p>16 answer, that you have no such recollection?</p> <p>17 A. I am happy to have you play back my</p> <p>18 answer.</p> <p>19 Q. Let me ask you this then, do you have</p> <p>20 any recollection of Mr. Klein telling you anything</p> <p>21 on that subject beyond what you have testified to?</p> <p>22 A. I think I can comfortably go back to</p> <p>23 what I said and really try and stay focused and</p> <p>24 consistent. I don't recall any reports of what</p> <p>25 was said at the bankruptcy, nor was I there.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you understand that cash was</p> <p>3 excluded from this transaction?</p> <p>4 A. I understood what I told you I</p> <p>5 understood, which is that there was a group of</p> <p>6 assets and a group of liabilities that we agreed</p> <p>7 on. The result of that would be the headline</p> <p>8 price that we talked about, the assets and</p> <p>9 liabilities that we talked about, the very, very</p> <p>10 high degree of confidence, notwithstanding</p> <p>11 incredible stress, pressure, volatility,</p> <p>12 uncertainty in the markets that we could be</p> <p>13 capital accretive. But I think on detail levels</p> <p>14 below that, we had delegated that and I wasn't</p> <p>15 involved in that.</p> <p>16 So I think specifics of -- specific</p> <p>17 pieces within that, there are some that we have</p> <p>18 talked about that I had knowledge of, but</p> <p>19 technical things like that, I wasn't part of</p> <p>20 the discussion.</p> <p>21 Q. We talked about the period up to</p> <p>22 people leaving for the bankruptcy court. Did you</p> <p>23 have any discussion -- what was the last</p> <p>24 discussion you had with Mr. Ricci before your team</p> <p>25 departed for the bankruptcy court?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall.</p> <p>3 Q. You used the term "signed off." What</p> <p>4 did you mean by that?</p> <p>5 A. I don't recall using that, how do I</p> <p>6 use it?</p> <p>7 Q. It was a lengthy answer you gave on</p> <p>8 the Livenote at transcript 183, line 14. "Right</p> <p>9 until the 11th hour, right until the 59th minute,</p> <p>10 we were unsure if we would get the people required</p> <p>11 from the Lehman Brothers to the bankruptcy court.</p> <p>12 It was a Lehman Brothers presentation to the</p> <p>13 bankruptcy court not Barclays. It was their</p> <p>14 presentation. So much so I think they took the</p> <p>15 tube not a car because the traffic was so bad and</p> <p>16 they wouldn't have gotten there on time. So it</p> <p>17 was right until the last minute and there did come</p> <p>18 a point, I don't recall when, that we had signed</p> <p>19 off on the deal which was being presented by</p> <p>20 Lehman was substantially the deal. But it was a</p> <p>21 Lehman presentation, so I wasn't part of it."</p> <p>22 What did you mean by sir by your</p> <p>23 reference to "signed off" in that answer?</p> <p>24 A. I think it was broadly speaking let's</p> <p>25 get them down to make their presentation.</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you preview the presentation that</p> <p>3 was being made?</p> <p>4 MR. HUME: Objection, vague.</p> <p>5 A. I did not.</p> <p>6 Q. Did you have any understanding as to</p> <p>7 the content of the presentation that Lehman was</p> <p>8 making?</p> <p>9 MR. HUME: Objection, vague and lacks</p> <p>10 foundation.</p> <p>11 A. It was a Lehman presentation, it</p> <p>12 wasn't a Barclays presentation.</p> <p>13 Q. Did you have any discussion with</p> <p>14 anyone at Barclays about that presentation?</p> <p>15 A. About the presentation?</p> <p>16 Q. Yeah.</p> <p>17 A. Not that I recall.</p> <p>18 Q. How about with anyone at Lehman?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did you and Mr. Ricci have any</p> <p>21 discussion prior to people departing for the</p> <p>22 bankruptcy court as to whether Barclays should go</p> <p>23 forward with the deal or simply tell Lehman that</p> <p>24 there was no point to making a presentation to the</p> <p>25 court because Barclays was not interested in</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 proceeding?</p> <p>3 A. I think I answered that, there were</p> <p>4 many times during the day including very, very</p> <p>5 close to the end where we were unclear whether or</p> <p>6 not we could get to a deal.</p> <p>7 Q. I am looking for last --</p> <p>8 A. I don't recall a specific conversation</p> <p>9 at the end. I wouldn't be surprised. It was a</p> <p>10 very stressful day. As I said, I was -- I was</p> <p>11 clearly not trying to get involved in the</p> <p>12 negotiations. Rich was completely capable of that</p> <p>13 and was the guy on the spot. I was in and out of</p> <p>14 conference rooms. I was hearing some things, but</p> <p>15 I was definitely not -- I was waiting for Rich to</p> <p>16 tell me whether we could go forward or not. I</p> <p>17 don't have any specific recollection of sitting</p> <p>18 down with him and saying kind of this is the</p> <p>19 moment that we go. It was very, very rushed at</p> <p>20 the end.</p> <p>21 Q. You don't recall a specific</p> <p>22 conversation in which Mr. Ricci told you we can go</p> <p>23 forward, but that was your understanding?</p> <p>24 A. Yeah, I -- I don't recall the moment.</p> <p>25 It is a good question, but I don't recall the</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 moment.</p> <p>3 Q. But that was in what, sometime mid</p> <p>4 afternoon around the time they left the bankruptcy</p> <p>5 court? Is that what you are talking about?</p> <p>6 A. My recollection -- and these days just</p> <p>7 blended one into the other, but my recollection</p> <p>8 was they needed to be downtown at 4, but it might</p> <p>9 have been 5, so it was right up until the end. I</p> <p>10 can't remember if -- maybe the hearing was at 5</p> <p>11 and they had to leave by 4, it was somewhere</p> <p>12 around there. I would have said late afternoon.</p> <p>13 Q. The cut-off is somewhere around late</p> <p>14 afternoon?</p> <p>15 A. Yeah.</p> <p>16 Q. And your conversation with Mr. Ricci</p> <p>17 it was OK to go forward would have been sometime</p> <p>18 right around close to the --</p> <p>19 A. We had -- we had previously agreed</p> <p>20 this is what we need to go forward and if he got</p> <p>21 to what he needed, it was -- we were going to go</p> <p>22 down.</p> <p>23 So within that, within that -- yeah.</p> <p>24 Our intent was to get to what we knew we</p> <p>25 needed. I think the -- I am probably saying</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 more than you need, but I'm just repeating the</p> <p>3 issue that was so fearful was because of the</p> <p>4 complete chaos and lack of control, could we</p> <p>5 find assets that were trustworthy and were</p> <p>6 appropriate.</p> <p>7 Q. But in any event, you reach by mid or</p> <p>8 late afternoon the conclusion that it was -- you</p> <p>9 would go ahead.</p> <p>10 A. That we would authorize Lehman to make</p> <p>11 the presentation, yes, and we would be there,</p> <p>12 right.</p> <p>13 Q. Did you understand that Barclays was</p> <p>14 going to address the court?</p> <p>15 A. I wasn't aware that Barclays addressed</p> <p>16 the court. I thought it was Lehman, but as I</p> <p>17 said, I made a decision for a number of reasons</p> <p>18 not to join the group. I probably -- partly for</p> <p>19 my mental health.</p> <p>20 But also we felt quite strongly that</p> <p>21 it would just attract media if I were there and</p> <p>22 other people were there and we wanted it, to</p> <p>23 the extent possible because this is already a</p> <p>24 media event, to be able to get the facts out</p> <p>25 and be able to get it so it would be</p>

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2 inappropriate for me to be there.  
3 It turns out it was such a length of  
4 time, I think it was a right decision and  
5 probably would have been awfully grueling and  
6 emotionally wearing. But I did not intend to  
7 go to it.  
8 Q. I ask you now to focus on the period  
9 following the bankruptcy court hearing. So that's  
10 from any time between the conclusion of that  
11 hearing and the closing of the transaction on  
12 Monday morning.  
13 A. OK.  
14 Q. At any time in that period of time  
15 that you had discussion with Mr. Ricci that  
16 Barclays would not go forward with the  
17 transaction --  
18 A. It sounds stark the way you are saying  
19 it, so I would say it slightly differently, that  
20 from late Sunday evening when the discussions took  
21 place between Rich and Jonathan and our lawyers  
22 and our advisors and Frank Bisignano and Steve  
23 Cutler and the JP Morgan team, around all  
24 aspects -- and I don't mean to be specific here,  
25 so I apologize, and I am trying to make it

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2 in the morning when we had to open, you know,  
3 when the wire opened. So it was very, very  
4 close. I don't have a lot of specifics, but it  
5 was touch-and-go during the night.  
6 Q. And you have referred specifically to  
7 issues with, involving JP Morgan?  
8 A. Yes.  
9 Q. Did Mr. Ricci and you have any  
10 discussions about any changes to the transaction  
11 over that weekend?  
12 A. I know there were all kinds of ins and  
13 outs and things going on. But basically, the  
14 structure and components of the deal that we  
15 were -- we agreed to go on Monday morning were the  
16 structure and components of the deal that we were  
17 given coming out of the bankruptcy court Saturday  
18 morning.  
19 I suspect they were minor ins and outs  
20 and overs and unders and that's what they were  
21 negotiating, but the structure was by and large  
22 and pieces were by and large consistent and  
23 appropriate with exactly what was approved.  
24 Q. Do you know whether there were any  
25 significant changes between the bankruptcy court

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2 general, but things like where are the securities,  
3 are they perfected, who is going to do cash versus  
4 who is going to do securities versus how do we  
5 open in the morning so that we can clear trades.  
6 This is a firm that had been bankruptcy for a week  
7 and stuff was all over the place.  
8 Those conversations were incredibly  
9 stressful. My memory is they started before  
10 Sunday night, but they got to a point where it  
11 really looked like we might not open Monday  
12 morning.  
13 So that was a, as I testified earlier,  
14 is my recollection is it was Sunday evening at  
15 some point when Jamie Dimon and I discussed on  
16 the phone that we should try and find a way to  
17 get a transaction done and that I would empower  
18 Rich, he didn't have to come and check  
19 everything with me, I would empower him within  
20 the criterion that he could do it and Jamie  
21 would empower -- I'm pretty sure it was Frank  
22 Bisignano and there were many phone calls  
23 during the night because I frankly couldn't  
24 sleep and I kept trying to contact Rich, how it  
25 was going, and it was, I think it was 5, 5:30

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2 hearing and the closing?  
3 A. I don't think -- the key all hinges on  
4 what do we mean by "significant." So I will go  
5 back to what I said. I think the structure, the  
6 spirit, the context of the transaction was in  
7 place to open Monday morning, but it was very  
8 stressful getting there with all kinds of  
9 settlement issues and this and that, but it was on  
10 balance the transaction.  
11 Q. If I made 500 million dollars the  
12 definition of the word "significant," are you  
13 aware of any changes, any significant changes to  
14 the transaction over that weekend?  
15 MR. HUME: Objection as a vague  
16 question, Bill. 500 million dollars, what,  
17 asset, liability, asset net of liability?  
18 MR. MAGUIRE: The witness said is  
19 there any -- it is significant is whatever  
20 the terms are, so I am putting the term 500  
21 million dollars.  
22 Q. Are you aware of any change to either  
23 party of anything in the amount of 500 million  
24 dollars over that weekend?  
25 A. I can't answer the question the way it



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2 is asked. Let me explain why. There could be a  
3 change because something moved from 500 million  
4 long bonds to a billion Treasury bills or a  
5 billion Treasury bills were the same as 500  
6 million long bonds and someone could interpret  
7 that as 500.  
8 So there was no value, significant  
9 value shift of any kind. There were ins and  
10 outs and small things and I am understanding,  
11 again, I wasn't at the coal face, but we had a  
12 deal, a structure, a component that was in  
13 context and principle and degree and kind what  
14 was approved and I think the clearing bank and  
15 Barclays had small ins and outs and various  
16 things going on between them.  
17 Q. You are saying there may have been  
18 substitutions but you are not aware of any change  
19 in overall value over that weekend, is that  
20 correct?  
21 MR. HUME: Objection, vague.  
22 Objection, vague, mischaracterizes the  
23 testimony.  
24 A. I think I said it well. I think in  
25 degree, in kind, in substance and structure, the

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2 Lehman was willing to make that Barclays' in order  
3 to get the assets to where they had committed to  
4 get them was something that came up late Friday.  
5 But to give more specificity than that would be  
6 difficult. Rich was really at the coal face and  
7 negotiating, but I know that was something that  
8 the Lehman team felt comfortable and offered.  
9 Q. You understood what they were  
10 discussing and negotiating was the excess in that  
11 account?  
12 MR. HUME: Objection, lacks  
13 foundation.  
14 A. Again, the discussion on -- certainly  
15 the customers were due, the customer, whatever it  
16 was, assets and liabilities, those were the  
17 customers', those were not Lehman's.  
18 MR. HUME: Can we take a break after  
19 you ask a few more questions.  
20 MR. MAGUIRE: I think we can finish  
21 out probably in five minutes so I will try  
22 to do that.  
23 Q. Now, did you understand that  
24 regulatory approval was required in order for  
25 Lehman to transfer the excess amounts in its 15c3

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2 transaction that was approved was executed. It  
3 was hell getting there overnight because of the  
4 chaos and the clearing systems and particularly  
5 around Lehman, so there were all kinds of things  
6 being negotiated at the margin and at the edges.  
7 Q. You mentioned in your earlier  
8 testimony a 15c3. Can you tell me, do you  
9 understand that a 15c3 account is a customer  
10 reserve account?  
11 A. In general, I understand that.  
12 Q. And you understand that that is an  
13 account that a broker/dealer is required to keep  
14 the minimum amount of assets to make sure that  
15 customers will be paid back their property?  
16 A. I would rather not get into what I  
17 know and don't know because I'm not an expert in  
18 that regard.  
19 Q. I am not asking you for an expert  
20 definition. I am asking you as layperson, is that  
21 broadly the understanding that you have?  
22 A. I'm not an expert in the area. I know  
23 that, as I said this morning, I know that giving  
24 access -- sorry, giving assurances that all of the  
25 excess in that account belonged to Lehman and that

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 account?  
3 A. That was again something that was  
4 being worked on at the coal face.  
5 Q. When you say the coal face --  
6 A. The people that were actually -- the  
7 workers.  
8 Q. Mr. Ricci was the miner?  
9 A. Ricci and the Lehman team and the  
10 others, but certainly not something that I was  
11 involved in on a day-to-day basis.  
12 Q. Did Mr. Ricci have authority to enter  
13 into a deal in which the 15c3 asset, its transfer  
14 was contingent on there being an excess in that  
15 account?  
16 A. I'm not sure I understand the  
17 question.  
18 Q. Did -- let me give a different  
19 question then. Did Mr. Ricci ever advise you that  
20 the 15c3 asset was contingent on regulatory  
21 approval?  
22 A. My understanding is that there were  
23 many things during this transaction that required  
24 various approvals as you go through. That's the  
25 nature of the business that we are in. I think in

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 specific was there a specific meeting on that, I  
3 don't recall. There may have been, but I don't  
4 recall.  
5 Q. And when we talk about the excess in  
6 the account, did you understand that there was  
7 uncertainty at Lehman as to whether there was an  
8 excess in the 15c3 account?  
9 MR. HUME: Objection, lacks  
10 foundation.  
11 A. You are asking specific questions  
12 about a conversation that I wasn't there for.  
13 That would be -- if there was a conversation about  
14 that, that would be on the detailed level.  
15 Q. You did understand there was chaos  
16 this week, is that correct?  
17 A. Certainly.  
18 Q. And you understood there was  
19 difficulty in getting fully reliable information  
20 from Lehman, is that correct?  
21 A. I have said that, yes.  
22 Q. So did you understand that with  
23 respect to any excess in the 15c3 account, that it  
24 would be difficult to determine with certainty  
25 whether, in fact, there was any such excess?

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 that there was certainty concerning the excess in  
3 the 15c3 account?  
4 MR. HUME: Objection, vague and  
5 ambiguous.  
6 A. You are adding two questions together.  
7 I didn't have any detailed conversations at all  
8 about it, so to then infer there was certainty or  
9 uncertainty, I didn't have conversations about it,  
10 period. So I wouldn't want it inferred that we  
11 were uncertain or certain. That was a  
12 conversation that I think it would be appropriate  
13 to ask Rich and you did have a chance.  
14 Q. Absolutely, thank you.  
15 Did Mr. Ricci ever give you to  
16 understand that there was certainty concerning the  
17 excess in the 15c3 account?  
18 MR. HUME: Objection, asked and  
19 answered.  
20 A. I am not going to answer it.  
21 Q. You have nothing to add to your  
22 previous answer?  
23 A. Correct.  
24 Q. Did anyone ever give you to understand  
25 that there were other assets that Lehman had that

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2 A. With all due respect, Barclays was  
3 trying to execute a transaction that would be good  
4 for Barclays, good for our shareholders, good for  
5 our employees, good for our clients but equally  
6 would be good for the financial system and good  
7 for Lehman and good for Lehman's clients and good  
8 for Lehman's employees and save 10,000 jobs.  
9 We are doing this in the midst of the  
10 most turmoil that had ever struck the financial  
11 markets with a firm that had been in bankruptcy  
12 for four or five days, and so we are working hard  
13 with Lehman and we certainly trusted, as much as  
14 we could, their good intent to be able to deliver  
15 the assets that we had talked about. And I think  
16 everyone knows what the intents were here and that  
17 was to deliver the value that we had talked about.  
18 And I think to probe, scratch way  
19 beneath that and get the chief executive to  
20 discuss minutiae when you have had an  
21 opportunity to discuss that with people at the  
22 coal face is inappropriate. So I can't help  
23 you in that regard because I wasn't at any of  
24 those meetings.  
25 Q. Did anybody at the coal face tell you

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2 were available for the sale but that Mr. Ricci had  
3 not managed to include within the scope of the  
4 sale?  
5 A. That's such a general question. I  
6 don't know if I --  
7 Q. Let me try to put it a little  
8 differently then. Did Mr. Ricci ever tell you  
9 that he had succeeded in getting all available  
10 assets that could be gotten and included in the  
11 sale?  
12 MR. HUME: Objection, vague. I don't  
13 know what you mean by "available."  
14 A. I think the conclusion we came to is  
15 that, you know, we set out with very clear  
16 objectives in terms of the pool of assets, the  
17 pool of liabilities, the capital accretion, and it  
18 was very difficult getting there. And in that  
19 process, there were many times when things looked  
20 available and turned out not to be available and  
21 it is possible -- and later on they turned out to  
22 be available or not available. So it was a  
23 difficult process.  
24 Q. Did Mr. Ricci ever tell you that he  
25 had gotten all the assets that could be gotten

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 from Lehman?</p> <p>3 A. I don't recall a conversation like</p> <p>4 that.</p> <p>5 Q. You mentioned a number of</p> <p>6 constituencies here including employees and so on.</p> <p>7 Did you understand that it was an important</p> <p>8 premise of this deal also to protect the customers</p> <p>9 of Lehman?</p> <p>10 A. From what?</p> <p>11 Q. From any loss of their property?</p> <p>12 A. I have to be careful how I say this.</p> <p>13 It is not meant to be overly legalistic or under</p> <p>14 legalistic, but our obligation to the clients</p> <p>15 would start when we were owners of the business,</p> <p>16 not before that.</p> <p>17 Q. So you felt Barclays had no legal</p> <p>18 obligation of any kind to any customers of Lehman,</p> <p>19 at least until they actually came over and became</p> <p>20 customers of Barclays?</p> <p>21 A. I feel that's too general and I feel</p> <p>22 too broad, but it was a, you know, there is a --</p> <p>23 there are obligations -- I mean, I think it is</p> <p>24 clear in law where the obligations were and the</p> <p>25 obligations weren't. Is there anything specific</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 that you were wondering about?</p> <p>3 Q. Let me ask you your understanding</p> <p>4 about the regulators, did you understand that it</p> <p>5 was important to the regulators to protect the</p> <p>6 customers of Lehman?</p> <p>7 A. Any particular customers, wholesale,</p> <p>8 retail, all?</p> <p>9 Q. All.</p> <p>10 A. Which regulators?</p> <p>11 Q. Well, let's start with the SEC. Did</p> <p>12 you understand that it was important to the SEC to</p> <p>13 protect customers of Lehman?</p> <p>14 A. Where customers had perfected</p> <p>15 securities.</p> <p>16 Q. Customers who had any property at</p> <p>17 Lehman?</p> <p>18 A. Again, I think it is too broad. So</p> <p>19 was it the SEC that was the -- it is just too</p> <p>20 broad for me to answer. Of course everyone cared,</p> <p>21 but then there is -- I'm not sure I am the right</p> <p>22 one from a legal point of view to differentiate</p> <p>23 the different types of customers, custody accounts</p> <p>24 versus transactions that were the holding company</p> <p>25 or broker/dealer, it was quite confusing.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. I don't want to get into those</p> <p>3 distinctions. I am asking you did you have an</p> <p>4 understanding at the time that it was important to</p> <p>5 the SEC that customer property should be protected</p> <p>6 in the sale?</p> <p>7 A. I didn't have any conversations with</p> <p>8 the SEC.</p> <p>9 Q. Did you have an understanding at the</p> <p>10 time that it was important to the Federal Reserve</p> <p>11 that customer property should be protected?</p> <p>12 A. By whom?</p> <p>13 Q. In the transaction?</p> <p>14 A. By Lehman?</p> <p>15 Q. That the effecting of the transaction</p> <p>16 should not prejudice customers or their property?</p> <p>17 MR. HUME: Objection, vague. Are you</p> <p>18 asking him whether the transaction benefited</p> <p>19 customers?</p> <p>20 MR. MAGUIRE: No.</p> <p>21 A. I worry here that I am going to slip</p> <p>22 up on a legal definition and I don't mean to. But</p> <p>23 what I would say is I think that the regulators</p> <p>24 were looking to Barclays only at the point that</p> <p>25 Barclays was an owner. And only so much as it was</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 an entity that was owned by Barclays and there</p> <p>3 were so many entities.</p> <p>4 Q. Yeah, I want to -- I don't want to get</p> <p>5 into the legal niceties and legal obligations</p> <p>6 because that's not my question. I want to ask you</p> <p>7 as a matter -- first of all, let me strike that</p> <p>8 and say, did you understand that the SEC supported</p> <p>9 the transaction?</p> <p>10 A. To the -- the Barclays acquisition?</p> <p>11 Q. Yeah.</p> <p>12 A. That's my understanding.</p> <p>13 Q. Did you understand that the Federal</p> <p>14 Reserve supported the transaction?</p> <p>15 A. That's my understanding.</p> <p>16 Q. Did you understand that the Securities</p> <p>17 Investment Protection Corporation supported the</p> <p>18 transaction?</p> <p>19 A. I don't have any specific knowledge on</p> <p>20 that, I'm not close to SIPC. I understood that</p> <p>21 the support was pretty broad on the regulatory</p> <p>22 side.</p> <p>23 Q. Are you aware that the mission of the</p> <p>24 SEC is to protect investors?</p> <p>25 A. I think the SEC's obligation in this</p>

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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 regard was as the primary regulator of the U.S.</p> <p>3 broker/dealer, wasn't it?</p> <p>4 Q. Do you understand that the mission of</p> <p>5 the SEC is to protect investors?</p> <p>6 MR. HUME: Objection, lacks</p> <p>7 foundation.</p> <p>8 Q. If you don't have that understanding,</p> <p>9 say so.</p> <p>10 A. I'm not aware of the mission statement</p> <p>11 of the SEC. What I was aware was they were the</p> <p>12 primary regulator of the U.S. broker/dealer of</p> <p>13 Lehman Brothers.</p> <p>14 Q. Did you understand that the SEC is the</p> <p>15 regulator responsible for making sure that</p> <p>16 customer property is protected?</p> <p>17 A. I am generally aware of the</p> <p>18 responsibilities of the regulators. I worry that</p> <p>19 you are asking me specifics that I may not be best</p> <p>20 at answering.</p> <p>21 Q. That goes beyond -- that goes to a</p> <p>22 level of detail where -- beyond your</p> <p>23 understanding, is that correct?</p> <p>24 A. What does?</p> <p>25 Q. What I asked you?</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 A. Why don't we try again.</p> <p>3 Q. OK, do you have an understanding that</p> <p>4 the SEC -- that it is important to the SEC to</p> <p>5 protect customers of a broker/dealer?</p> <p>6 MR. HUME: Objection, lacks</p> <p>7 foundation. You are asking him to talk</p> <p>8 about what is important to the SEC?</p> <p>9 MR. MAGUIRE: No, I am asking him for</p> <p>10 his understanding. He has that</p> <p>11 understanding or he does not. Just let me</p> <p>12 know.</p> <p>13 A. So say it again.</p> <p>14 Q. Let me try it a little differently.</p> <p>15 Do you have an understanding that the SEC is the</p> <p>16 regulator responsible for making sure that the</p> <p>17 customer property of the broker/dealer is</p> <p>18 protected?</p> <p>19 A. I think -- I think there are various</p> <p>20 regulators that have overlapping responsibilities</p> <p>21 there.</p> <p>22 Q. Do you understand that the SEC is one</p> <p>23 of those regulators?</p> <p>24 A. I'm not close enough to understand who</p> <p>25 has primacy there or who is responsible.</p>
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<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you have an understanding that any</p> <p>3 regulator was responsible for protecting customer</p> <p>4 property?</p> <p>5 A. My understanding is when the</p> <p>6 regulators made a decision to force bankruptcy,</p> <p>7 that they recognize that many customers would lose</p> <p>8 money and that there was a difference between</p> <p>9 customers who might have risk positions on as</p> <p>10 opposed to customers who had custodian accounts,</p> <p>11 for example.</p> <p>12 So it is quite a complex area and I</p> <p>13 have high admiration and confidence in the</p> <p>14 regulators to protect customers in those</p> <p>15 situations, but I also recognize that we have</p> <p>16 been dealing for a year with many customers who</p> <p>17 did not have securities in custody who are</p> <p>18 still working with the bankruptcy court and</p> <p>19 regulators and other people that got their</p> <p>20 securities back so I hope that the regulators</p> <p>21 work through this.</p> <p>22 Q. Did you understand it was important to</p> <p>23 the regulators that customer property be</p> <p>24 protected?</p> <p>25 A. I would always imagine that regulators</p>	<p>1 DIAMOND - HIGHLY CONFIDENTIAL</p> <p>2 would care about customers, yes.</p> <p>3 MR. HUME: Can we take a break? Are</p> <p>4 you finished?</p> <p>5 MR. MAGUIRE: Finish. Do you have</p> <p>6 questions?</p> <p>7 MR. DAKIS: Just a few.</p> <p>8 MR. HUME: Can we have a two-minute</p> <p>9 break?</p> <p>10 MR. DAKIS: Of course.</p> <p>11 (Recess)</p> <p>12 EXAMINATION BY</p> <p>13 MR. DAKIS:</p> <p>14 Q. I am Robert Dakis from the law firm of</p> <p>15 Quinn, Emanuel, Urquhart, Oliver &amp; Hedges. We</p> <p>16 represent the committee of unsecured creditors. I</p> <p>17 wanted to ask you some follow-up questions about</p> <p>18 something that Mr. Gaffey asked you about earlier.</p> <p>19 Earlier today, you testified that you</p> <p>20 had a conversation with Heidi Miller regarding</p> <p>21 Barclays' decision not to roll the repo. Do</p> <p>22 you recall that testimony?</p> <p>23 A. Yes.</p> <p>24 Q. And during that testimony, I believe</p> <p>25 you said that you had explained to Ms. Miller</p>

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2 Barclays' reasons for not renewing the repo. Do  
3 you recall that?  
4 A. No.  
5 Q. Do you recall the sum and substance of  
6 your conversation with Ms. Miller?  
7 A. Yes.  
8 Q. Could you tell us, please.  
9 A. The sum and essence was an initial  
10 feeling that we had made a commitment to continue  
11 rolling a day-to-day repo and I said, actually, I  
12 don't know where you had that basis. And I  
13 mentioned a couple of people and I said Gerard  
14 didn't do it, I've talked to all the people.  
15 Possibly it came from someone at Lehman Brothers  
16 and Heidi, you and I have never talked before.  
17 And the roll-up conversation was, I'm sorry,  
18 you're right, the conversation, my people are  
19 reporting to me was someone from Lehman Brothers,  
20 not someone from Barclays, and you're right, you  
21 didn't make any commitments.  
22 Q. Going back to the first conversation,  
23 did you at all give any reason why Barclays didn't  
24 roll the repo?  
25 A. No.

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2 not really sure, but it was not an obligation  
3 and it was just a commercial decision not to.  
4 And there was no indication given or commitment  
5 given to do it.  
6 Yet it kept coming back, so I had  
7 actually two conversations that first day with  
8 Heidi, the first one and then the follow-up  
9 when she came back to me -- and I'm pretty sure  
10 the only other conversation I had with Heidi  
11 ever was the, I think I said Friday evening  
12 earlier it was actually Thursday evening when  
13 we stepped into the Fed repo. And I talked to  
14 the group of people where Heidi was one of  
15 them.  
16 I think during that conversation it  
17 came up again as a -- but I'm not positive, it  
18 did come up again certainly with the  
19 discussions that Rich was having Sunday and  
20 Sunday night a number of times. I don't think  
21 it came up in the conversation I had with Jamie  
22 Dimon, but it may have, and I don't think it  
23 did but it was a continuing source of friction  
24 between us and it has continued to be. I think  
25 post the completion of the deal, there had been

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 Q. Do you have any understanding about  
3 why Barclays didn't roll the repo?  
4 A. It is not an obligation, it is a  
5 choice, and again, to use an often used phrase,  
6 that choice was really driven by the people at  
7 coal face.  
8 Q. Who would be the people who would have  
9 the best knowledge about why the repo wasn't  
10 rolling?  
11 A. It would be in the operations area, so  
12 probably someone reporting in to Gerard Larocca.  
13 Q. Aside from these two conversations  
14 that you mentioned, the first one with Ms. Miller  
15 and second one was Ms. Miller and some other  
16 people, did you have any conversations with anyone  
17 at JP Morgan Chase regarding this repurchase  
18 agreement? This is the repo that didn't roll, not  
19 the larger one.  
20 A. Yes.  
21 Let me give you the framework and then  
22 tell me if you want more specifics. There was  
23 a continuing disappointment or anger, depending  
24 on your point of view, that we didn't roll.  
25 Why there was an expectation that we would, I'm

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2 many other discussions about it, about -- it  
3 always comes up when something else is coming  
4 up, but nothing substantive, if that helps.  
5 Q. That does. Just to follow up on  
6 something, did you have any other -- you mentioned  
7 a conversation with Jamie Dimon on Sunday night  
8 regarding the Lehman transaction. Did you have  
9 any other conversations with Mr. Diamond regarding  
10 the Lehman transaction?  
11 A. Before the close?  
12 Q. Before the close.  
13 A. That's a good question.  
14 I think that's the only one. I think.  
15 I think that's the only one.  
16 Q. Any conversations regarding Lehman  
17 Brothers after the close?  
18 A. Well, it was more regarding Barclays  
19 after the close if that's what you mean. It was  
20 one more conversation during the difficulties of  
21 resolving the 7 billion dollars that was taken out  
22 of custody.  
23 Q. And what was the sum and substance of  
24 that conversation?  
25 A. Him asking us to sit down and -- him

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2 asking me to sit down with his team or have my  
3 team sit down with his team to try and work it out  
4 and me saying, Jamie, you took 7 billion dollars  
5 out of a custody account, it's against the law, if  
6 you put it back we will sit down and discuss it  
7 but not until then.  
8 MR. DAKIS: I have nothing further.  
9 MR. HUME: Thanks.  
10 (Time noted: 4:18 p.m.)  
11  
12  
13 ROBERT EDWARD DIAMOND, JR.  
14 Subscribed and sworn to  
15 before me this day  
16 of September, 2009.  
17  
18  
19  
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23  
24  
25

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1 DIAMOND - HIGHLY CONFIDENTIAL  
2  
3 CERTIFICATE  
4 STATE OF NEW YORK )  
5 )ss:  
6 COUNTY OF NEW YORK)  
7 I, MARY F. BOWMAN, a Registered  
8 Professional Reporter, Certified Realtime  
9 Reporter, and Notary Public within and for  
10 the State of New York, do hereby certify:  
11 That ROBERT EDWARD DIAMOND, JR., the  
12 witness whose deposition is hereinbefore set  
13 forth, was duly sworn by me and that such  
14 deposition is a true record of the testimony  
15 given by such witness.  
16 I further certify that I am not  
17 related to any of the parties to this action  
18 by blood or marriage and that I am in no way  
19 interested in the outcome of this matter.  
20 In witness whereof, I have hereunto  
21 set my hand this 11th day of September,  
22 2009.  
23  
24 MARY F. BOWMAN, RPR, CRR  
25

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8 EXHIBITS  
9 Exhibit No. Marked  
10 Exhibit 412-A Document Bates stamped 153  
11 BCI-EX-S 25413  
12 Exhibit 413-A Document Bates stamped 164  
13 BCI-EX-S 79546  
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1 DIAMOND - HIGHLY CONFIDENTIAL  
2 \*\*\*ERRATA SHEET\*\*\*  
3 NAME OF CASE: In Re: Lehman  
4 DATE OF DEPOSITION: 9/11/09  
5 NAME OF WITNESS: ROBERT EDWARD DIAMOND, JR.  
6 Reason codes:  
7 1. To clarify the record.  
8 2. To conform to the facts.  
9 3. To correct transcription errors.  
10 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
11 From \_\_\_\_ to \_\_\_\_  
12 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
13 From \_\_\_\_ to \_\_\_\_  
14 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
15 From \_\_\_\_ to \_\_\_\_  
16 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
17 From \_\_\_\_ to \_\_\_\_  
18 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
19 From \_\_\_\_ to \_\_\_\_  
20 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
21 From \_\_\_\_ to \_\_\_\_  
22 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
23 From \_\_\_\_ to \_\_\_\_  
24 ROBERT EDWARD DIAMOND, JR.  
25

# BCI EXHIBIT

64

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----X

In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*

9 DEPOSITION OF PAUL EXALL

10 New York, New York

11 Thursday, August 27, 2009  
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19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24380  
22  
23  
24  
25



Page 2	Page 3
<p>1 2 3 4 5 August 27, 2009 6 9:30 a.m. 7 8 9 HIGHLY CONFIDENTIAL deposition of 10 PAUL EXALL, held at the offices of Jones 11 Day, 222 East 41st Street, New York, New 12 York, pursuant to Notice, before Francis 13 X. Frederick, a Certified Shorthand 14 Reporter, Registered Merit Reporter and 15 Notary Public of the States of New York 16 and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: WILLIAM J. HINE, ESQ. 9 GEORGE E. SPENCER, ESQ. 10 11 BOIES SCHILLER &amp; FLEXNER, LLP 12 Attorneys for Barclays Capital 13 333 Main Street 14 Armonk, New York 10504 15 BY: CHRISTOPHER M. GREEN, ESQ. 16 17 HUGHES, HUBBARD &amp; REED, LLP 18 Attorneys for the SIPA Trustee 19 1175 I Street, N.W. 20 Washington, D.C. 20006-2401 21 BY: JOHN F. WOOD, ESQ. 22 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: (Cont'd.) 3 JENNER &amp; BLOCK, LLC 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: VINCENT LAZAR, ESQ. 8 9 10 ALSO PRESENT: 11 INGRID M. CHRISTIAN, Alvarez &amp; Marsal 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 PROCEEDINGS - HIGHLY CONFIDENTIAL 2 (Deposition Exhibit 279B, Debtors' 3 First Rule 30(b)(6) Deposition Notice to 4 Barclays on Issues Pertaining to Accrued 5 08 FY Liability Under the Asset Purchase 6 Agreement, marked for identification as 7 of this date.) 8 * * * 9 PAUL EXALL, called as a witness, 10 having been duly sworn by a Notary 11 Public, was examined and testified as 12 follows: 13 EXAMINATION BY 14 BY MR. HINE: 15 Q. Good morning, Mr. Exall. We met 16 off the record. My name is Bill Hine. I'm 17 from Jones Day which is a law firm that 18 represents the estate of Lehman Brothers 19 Holding, Inc. in connection with some 20 bankruptcy proceedings that are going on with 21 respect to Lehman. And this deposition is 22 taking place in connection with that. 23 Have you ever been deposed before? 24 A. No. 25 Q. I'm sure your counsel has advised</p>

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 you what's going to happen here but basically  
3 I'm going to ask you a series of questions.  
4 You're under oath. You're going to answer the  
5 questions as best you can.  
6 At some point during the  
7 deposition you might hear your attorney voice  
8 an objection to either preserve an objection  
9 or challenge a question that I might ask.  
10 That doesn't relieve you of the obligation to  
11 answer the question. You still have to answer the  
12 question. I might change the question in  
13 response to his deposition -- to his objection  
14 but unless he instructs you not to answer you  
15 still have to answer the question. Okay?  
16 A. I understand.  
17 Q. In that regard if I ask a question  
18 that's a little bit confusing or I misuse a  
19 term that you folks use or an abbreviation  
20 that you folks use, please correct me and ask  
21 me to clarify the question. I want to have a  
22 clear question so I can get a clear answer,  
23 okay?  
24 A. Okay.  
25 Q. Did you prepare at all for today's

Page 8

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Q. Okay. You're aware that you've  
3 been asked to appear by Barclays as a 30(b)(6)  
4 witness on specific topics, correct?  
5 A. Yes.  
6 Q. Okay. Well, let's start off with  
7 the 30(b)(6) notice. I'm going to hand you a  
8 copy of a document marked as Exhibit 279B  
9 which is entitled Debtor's First Rule 30(b)(6)  
10 Deposition Notice to Barclays on Issues  
11 Pertaining to Accrued '08 FY Liability Under  
12 the Asset Purchase Agreement.  
13 And my question is have you ever  
14 seen this deposition notice?  
15 A. I have.  
16 Q. Fair to say you reviewed this in  
17 preparation for today's deposition?  
18 A. I have reviewed this, yes.  
19 Q. And if you look on Schedule A  
20 which is the third page you'll see you've been  
21 designated as a 30(b)(6) witness in connection  
22 with bonus and severance payments made to  
23 former Lehman employees, right?  
24 MR. GREEN: Object to the form of  
25 the question. That's not all the

Page 7

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 deposition?  
3 A. Yes, I did.  
4 Q. How did you do that?  
5 A. I obviously met with counsel and  
6 prepared over the course of the past week.  
7 And I reviewed insofar as I could the  
8 documentation and events around the time of  
9 the acquisition insofar as I could recall them  
10 and reference them.  
11 Q. Okay. Did any of those documents  
12 refresh your recollection about anything in  
13 connection with this litigation?  
14 A. Yes, they did. Yes.  
15 Q. Which documents are those?  
16 A. I don't recall. I mean, I read  
17 through a lot of old e-mail correspondence and  
18 things like that that I have in relation to  
19 the matter. And I had discussions with people  
20 that assisted me in the preparation of the  
21 spreadsheet.  
22 Q. And you don't have any specific  
23 document that refreshed your recollection  
24 about that?  
25 A. Nothing specific.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 schedule says.  
3 MR. HINE: Okay.  
4 Q. But in general you're here to  
5 testify about bonus and severance payments  
6 made to former Lehman employees, right?  
7 A. I'm here to represent that --  
8 what's represented on the schedule prepared in  
9 respect to this deposition.  
10 Q. Okay. Now, that schedule is the  
11 schedule -- the spreadsheet referenced in this  
12 Schedule A?  
13 A. I believe it to be, yes.  
14 Q. And then a couple days ago we  
15 received a replacement or an updated  
16 spreadsheet so you understand that that's the  
17 subject of today's deposition as well.  
18 A. I do.  
19 Q. Okay. We'll get to that later.  
20 I'm done with that exhibit.  
21 Well, before I finish on that did  
22 you undertake any investigation in connection  
23 with being a 30(b)(6) witness?  
24 A. What do you mean by that?  
25 Q. Well, did you look into any of the

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **issues that are embodied in that spreadsheet**  
3 **in preparation for today's deposition?**  
4 A. I prepared the spreadsheet,  
5 itself.  
6 Q. Okay.  
7 A. So I understand the items on it  
8 and can testify to those.  
9 Q. Okay. Could you just give me a  
10 little background about yourself? You're a  
11 Barclays employee; is that correct?  
12 A. Barclays Capital employee, that's  
13 correct.  
14 Q. And how long have you been with  
15 Barclays?  
16 A. As a permanent employee I've been  
17 with Barclays since April 2000. Prior to that  
18 I consulted with Barclays Capital from around  
19 June 2008.  
20 MR. GREEN: You mean 1998? Excuse  
21 me.  
22 Q. I think you just lost me.  
23 A. 1998, sorry.  
24 Q. All right. Just so I have it, you  
25 consulted with Barclays from June 1998 to

Page 12

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **you've been in the HR department since you**  
3 **came to Barclays?**  
4 A. No, that's not correct. Initially  
5 in 2008 I joined the investment banking  
6 finance department which then amalgamated into  
7 the finance global department. And I worked  
8 there until approximately July 2001 when I  
9 transferred down to HR.  
10 Q. Did any of your work prior to July  
11 21 involve compensation issues?  
12 A. Insofar as it related to finance  
13 matters and books and records of Barclays  
14 Capital, yes.  
15 Q. Well, let me -- let's take a step  
16 back. If you were to describe your current  
17 duties, could you just explain to me what your  
18 duties and responsibilities are in your  
19 current position?  
20 A. The primary responsibilities that  
21 I assume are -- I work for Michael Evans as  
22 the global head of HR across investment bank,  
23 management. My primary duties involve -- and  
24 this is the best way I can describe it -- the  
25 liaison between Barclays Capital HR and -- or

Page 11

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **April 2000?**  
3 A. That's correct.  
4 Q. And from April 2000 you've been a  
5 permanent employee of Barclays; is that right?  
6 A. That's right.  
7 Q. And in what capacity are you  
8 employed by Barclays?  
9 A. Currently my job title would be  
10 head of compensation analytics across  
11 investment banking and investment management.  
12 Q. How long have you held that  
13 position?  
14 A. I would estimate four -- three,  
15 four, five years.  
16 Q. Okay. And what were you before  
17 that?  
18 A. I've been a director in HR for  
19 several years. The job role, itself, has  
20 existed since -- it sort of -- it's become a  
21 formal role so to speak. I've been doing this  
22 particular function for Barclays Capital, for  
23 BGI, and for Barclays Wealth, over a period of  
24 time since I joined the HR department.  
25 Q. Okay. And is it fair to say that

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **IBRAM HR because we span Barclays Global**  
3 **Investors and Barclays Wealth, with the group**  
4 **HR function and the board HR and remuneration**  
5 **committee of Barclays PLC. So any**  
6 **compensation matters that require approval by**  
7 **the remuneration committee under its terms of**  
8 **reference as a committee of the board of**  
9 **Barclays, those matters come through me**  
10 **subject to approval by management.**  
11 Q. Okay. So --  
12 A. That's one of the primary roles.  
13 The other functions I perform are some  
14 analytical modeling around internal  
15 compensation related matters for Barclays  
16 Capital BGI and Wealth.  
17 Q. You keep saying different entities  
18 here. BGI is what?  
19 A. Yes. Just to explain the  
20 structure of what is known as investment  
21 banking and investment management -- if you  
22 look in the books -- in the published report  
23 of the accounts of Barclays PLC there's  
24 investment banking and investment management  
25 and what's called GICB and then there's the

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 group center. Investment Banking and  
3 Investment Management comprise the three  
4 businesses run by Mr. Diamond. Barclays  
5 Capital, Barclays Global Investors, now  
6 subject to the sale to Blackrock, and Barclays  
7 Wealth.

8 Q. And your primary role is with that  
9 group?

10 A. That's correct.

11 Q. And other groups you have a role  
12 or not?

13 A. No.

14 Q. Okay. So did I understand you  
15 correctly that you interface between that  
16 group, the one run by Mr. Diamond, with  
17 respect to compensation matters to the  
18 committee of the board who approves  
19 compensation; is that right?

20 A. Yes. I do not liaise directly  
21 with them. We go through obviously our own  
22 management who represent us on that committee.  
23 And I liaise with the group HR function who  
24 again represent them and others on that  
25 committee.

Page 16

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 MR. GREEN: All right.  
3 BY MR. HINE:

4 Q. So, Mr. Exall, could you explain  
5 to me -- you're aware that this whole  
6 proceeding and these depositions have to do  
7 with the sale -- a transaction between Lehman  
8 and Barclays that closed on or around  
9 September 22nd, 2008, correct?

10 A. I understand that, yes.

11 Q. Okay. Could you just describe for  
12 me generally any role you played in connection  
13 with that transaction through -- what I'm  
14 asking about is any role you played in the  
15 negotiations of the transaction or the closing  
16 or anything else related to it.

17 MR. GREEN: Object to the form.

18 You may answer.

19 A. I played no role whatsoever in any  
20 negotiations whatsoever.

21 Q. Okay. So -- and, again, I just  
22 want to get a sense of your general background  
23 here. You were not involved in discussions  
24 concerning the compensation provisions that  
25 later made their way into the Asset Purchase

Page 15

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Q. Okay. So Mr. Evans is -- and what  
3 is his title?

4 A. Mr. Evans is -- amongst other  
5 things he's responsible for several  
6 departments. I'll probably to get this wrong  
7 but in my capacity he's global head of human  
8 resources across global investment global  
9 management.

10 Q. So you report to him?

11 A. I do.

12 Q. Do you report to anyone else  
13 directly?

14 A. Not directly.

15 Q. Okay.

16 MR. GREEN: Bill, I just want to  
17 without giving a long speech say that  
18 when you're getting background from Paul  
19 of his understanding of the  
20 organization, I mean this is just  
21 background from him. He's not speaking  
22 as a 30(b)(6) deponent in terms of  
23 taking a position for the company on  
24 what the organizational structure is.

25 MR. HINE: Fair enough.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Agreement; is that right?

3 MR. GREEN: Objection to the form  
4 of the question. You may answer.

5 A. Could you repeat the question,  
6 please?

7 Q. You were not involved, am I right,  
8 in the negotiations or discussions concerning  
9 the compensation provisions that later made  
10 their way into the Asset Purchase Agreement in  
11 this case; is that right?

12 A. That is right. I was not  
13 involved.

14 Q. Okay. And how did you learn about  
15 the compensation provisions that are embodied  
16 in the Asset Purchase Agreement?

17 MR. GREEN: Object to the form.

18 A. I was passed a copy of the  
19 purchase agreement by some colleagues in the  
20 finance department.

21 Q. Okay.

22 A. And reading that and -- I came to  
23 understand that there were some provisions in  
24 there in relation to compensation.

25 Q. Okay. And were you passed -- when

Page 18

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 were you passed that agreement?  
3 A. I can't recall the exact date but  
4 it would have been on or around the 22nd of  
5 September or shortly thereafter.  
6 Q. Okay. And did you need to consult  
7 that agreement to do your job from then on?  
8 A. It was a point of reference, yes.  
9 Q. Okay. Were you passed any other  
10 documents related to compensation in  
11 connection with this transaction?  
12 A. Yes.  
13 Q. Like what?  
14 A. I requested to see a copy of the  
15 schedule referred to in the APA.  
16 Q. Okay.  
17 A. The sale agreement.  
18 Q. Okay.  
19 A. And I was passed what was  
20 represented to me as being that schedule.  
21 Q. Okay. Anything else?  
22 A. I don't recall getting any other  
23 specific sale-related documentation in that  
24 regard, no.  
25 Q. Okay. Have you ever seen a copy

Page 20

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 with the Asset Purchase Agreement?  
3 A. I don't recall specifically seeing  
4 that document. I know of its existence but I  
5 don't recall actually either seeing it or  
6 having read it in any great detail.  
7 Q. Okay.  
8 A. If I did see it.  
9 Q. Do you have any understanding of  
10 its purpose?  
11 A. No. Not particularly.  
12 Q. Do you have any understanding of  
13 how it relates in any way, if at all, to  
14 compensation issues?  
15 A. No.  
16 Q. Okay. Is it fair to say that  
17 you've been able to do your job with respect  
18 to compensation of former Lehman employees  
19 without consulting the clarification letter?  
20 A. I believe so.  
21 Q. Okay. And I believe you said  
22 earlier that you prepared the spreadsheet that  
23 we're going to be discussing here today?  
24 A. I did.  
25 Q. Okay. And is that something that

Page 19

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 of the first amendment to the Asset Purchase  
3 Agreement?  
4 A. I don't believe so, no.  
5 Q. Okay. Fair to say you don't have  
6 any use for that document in connection with  
7 the work you've performed with respect to  
8 compensating former Lehman employees?  
9 MR. GREEN: Object to the form of  
10 the question.  
11 MR. HINE: It was a bad question.  
12 Let me try again.  
13 Q. Is it fair to say you haven't had  
14 need to consult with the first amendment of  
15 the APA in connection with the work you  
16 performed with respect to compensation for  
17 former Lehman employees?  
18 A. I did not consult it.  
19 Q. Okay.  
20 A. Consequently, I do not know if I  
21 needed to.  
22 Q. Okay. Fair enough.  
23 Have you ever seen a document  
24 called a clarification letter that was agreed  
25 to between Barclays and Lehman in connection

Page 21

1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 you prepared in the normal course of your  
3 employment?  
4 A. It was prepared in the normal  
5 course of business in support of various  
6 requirements from PriceWaterhouseCoopers as  
7 part of their annual audit as well as the  
8 ancillary or related regulatory filings that  
9 they may or may not have had to prepare.  
10 Q. So when was it prepared?  
11 MR. GREEN: Object to the form.  
12 You mean the spreadsheet? When was the  
13 original spreadsheet prepared?  
14 MR. HINE: Well, we'll just wait  
15 till I get to the spreadsheet. I just  
16 want to get some background here.  
17 Q. We'll put that question aside.  
18 So when did you learn of the  
19 Lehman/Barclays sale transaction?  
20 A. I learned -- I don't recall  
21 actually specifically learning when it  
22 occurred. I was aware that the initial  
23 discussions were being held in New York  
24 amongst various parties in relation to the  
25 original form of the transaction whereby, I

Page 22

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 understand, Barclays was going to acquire the  
3 entire Lehman Brothers business.

4 But whenever those discussions  
5 began I don't know. I do know that when Mr.  
6 Evans flew to New York in support of those  
7 negotiations of that initial transaction, I  
8 would have understood him to have been there  
9 in that respect.

10 Q. Okay. Let me just kind of get  
11 some time frames here. As I understand it,  
12 there was an initial series of discussions  
13 between Barclays and Lehman prior to September  
14 15th, 2008. And the reason I use that date is  
15 September 15th, 2008 is the date -- or  
16 September 16th, 2008 is the date of the Asset  
17 Purchase Agreement. And the 15th is the date  
18 that Lehman Brothers Holdings declared  
19 bankruptcy. So are you talking about the  
20 discussions that took place prior to that?

21 A. I knew that discussions were  
22 taking place prior to that date with respect  
23 to the initial form of the transaction, yes.

24 Q. Okay. And Mr. Evans flew over for  
25 that discussion?

Page 24

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 outside of the Lehman Brothers transaction.

3 Q. Okay. Did you have any -- I  
4 understand that. I'm not trying to look into  
5 what you talked to him about that had to do  
6 with other business.

7 But did you have any discussions  
8 with him during that period about compensation  
9 issues with respect to the potential Lehman  
10 transaction?

11 MR. GREEN: Objection to form.

12 What precise period are you talking  
13 about?

14 Q. Okay. Let's -- again, Mr. Exall,  
15 I'm talking about the period prior to  
16 September 15th, 2008.

17 So did you have any discussions  
18 with Mr. Evans about compensation issues that  
19 arose in these early discussions with Lehman?

20 A. Yes, I did.

21 Q. And what did he tell you?

22 A. I assisted Mr. Evans and others  
23 assisted Mr. Evans with some due diligence  
24 work around the initial form of the original  
25 transaction through the normal course of any

Page 23

1 P. EXALL - HIGHLY CONFIDENTIAL

2 A. I believe so.

3 Q. Okay.

4 A. That's my recollection.

5 Q. Okay. Do you have any  
6 recollection or understanding of what was  
7 discussed during that period?

8 A. Nothing.

9 Q. Okay.

10 A. Nothing specific.

11 Q. Okay. Anything general?

12 A. I was not involved in those  
13 discussions.

14 Q. Okay. Did you hear anything about  
15 what was going on over in New York?

16 A. Sure. I was in contact with Mr.  
17 Evans intermittently during that period.

18 Q. Okay.

19 A. And we had general discussions  
20 notwithstanding about what was happening or  
21 not in New York but also my day-to-day  
22 activities, I still reported to Mr. Evans and  
23 had to do my job. And most of those  
24 discussions would have been around things that  
25 were ongoing as normal course of business

Page 25

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 acquisition or potential acquisition the  
3 information was made available to us as part  
4 of the data room activities.

5 Q. Okay.

6 A. And I discussed with them the  
7 various compensation issues with respect of  
8 the documents and the data provided to us as  
9 part of the data room and as part of those  
10 initial activities related to the initial  
11 transaction. So I did some due diligence work  
12 around that information that was presented to  
13 us.

14 Q. And what did you learn in your due  
15 diligence?

16 A. What do you mean by that?

17 Q. Well, did you learn of anything  
18 relating to the aggregate amount of  
19 compensation that was going to have to be paid  
20 to Lehman executives, for example?

21 MR. GREEN: Object to the form.

22 Bill, I've given you a lot of latitude  
23 to question Paul on background matters  
24 and factual matters at this period but  
25 these matters are beyond the scope of

Page 26	Page 27
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 the 30(b)(6) deposition notice which</p> <p>3 specifically pertains to bonus and</p> <p>4 severance compensation as reflected in</p> <p>5 the spreadsheet produced by Barclays.</p> <p>6 MR. HINE: Okay. But, I mean, the</p> <p>7 bonus and severance compensation relates</p> <p>8 to more than just the spreadsheet. This</p> <p>9 deposition is about those issues. I'm</p> <p>10 just trying to get his background as we</p> <p>11 lead up to decisions that were made as</p> <p>12 to bonus and severance payments that</p> <p>13 were actually made.</p> <p>14 MR. GREEN: Well, our</p> <p>15 understanding is that the deposition is</p> <p>16 about the bonus and severance</p> <p>17 compensation paid to employees who</p> <p>18 transferred from Lehman to Barclays as</p> <p>19 reflected in the spreadsheet produced by</p> <p>20 Barclays.</p> <p>21 MR. HINE: Right.</p> <p>22 MR. GREEN: So this line of</p> <p>23 questioning is about something other</p> <p>24 than that because the actual</p> <p>25 compensation paid is reflected in the</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 spreadsheet. You're now talking about</p> <p>3 due diligence and matters that occurred</p> <p>4 before any compensation was paid.</p> <p>5 MR. HINE: Well, I understand</p> <p>6 that. If you're instructing him not to</p> <p>7 answer, that's fine, we'll move on. But</p> <p>8 I feel I'm entitled to explore the</p> <p>9 background that led to the decisions</p> <p>10 that were made on what to pay these</p> <p>11 folks when the transaction was</p> <p>12 ultimately consummated. So I'm just</p> <p>13 trying to get some background</p> <p>14 information as to whether there were any</p> <p>15 agreements or understandings back in</p> <p>16 that early period that led to decisions</p> <p>17 later.</p> <p>18 MR. GREEN: I just want to make</p> <p>19 clear that with respect to background or</p> <p>20 matters Mr. Exall is being questioned as</p> <p>21 a fact witness to the extent he has</p> <p>22 knowledge about any of those matters and</p> <p>23 not as a 30(b)(6) representative of the</p> <p>24 company.</p> <p>25 MR. HINE: I have no problem with</p>
Page 28	Page 29
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 that.</p> <p>3 MR. GREEN: He's here to testify</p> <p>4 about the -- as a 30(b)(6) witness about</p> <p>5 the spreadsheet and what's on the</p> <p>6 spreadsheet.</p> <p>7 MR. HINE: I agree with that.</p> <p>8 MR. GREEN: These questions are</p> <p>9 questions that he may or may not be able</p> <p>10 to answer as a fact witness.</p> <p>11 MR. HINE: Okay. I understand</p> <p>12 that.</p> <p>13 MR. GREEN: All right.</p> <p>14 MR. HINE: Let's agree that the</p> <p>15 scope of his 30(b)(6) questioning will</p> <p>16 entail what's specifically written on</p> <p>17 Schedule A which is the payments of</p> <p>18 bonus and severance as relevant in the</p> <p>19 spreadsheet.</p> <p>20 MR. GREEN: Right. The</p> <p>21 spreadsheet itself.</p> <p>22 MR. HINE: But I still feel I'm</p> <p>23 entitled to get some background</p> <p>24 information from him outside the scope</p> <p>25 of the 30(b)(6).</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: I think that's</p> <p>3 probably accurate under the prevailing</p> <p>4 law and so I'm not objecting to that but</p> <p>5 I just want to make it clear that it's</p> <p>6 not within the realm of his 30(b)(6)</p> <p>7 testimony.</p> <p>8 MR. HINE: Sure. I understand.</p> <p>9 BY MR. HINE:</p> <p>10 Q. All right. Mr. Exall, back to the</p> <p>11 period before September 15th. Did you come to</p> <p>12 any conclusions or view -- Mr. Evans reach any</p> <p>13 understanding about the aggregate amount of</p> <p>14 compensation that was going to have to be paid</p> <p>15 to former Lehman employees in connection with</p> <p>16 the proposed transaction?</p> <p>17 MR. GREEN: Objection to form.</p> <p>18 You may answer.</p> <p>19 A. No.</p> <p>20 Q. Did you have any general sense of</p> <p>21 how much compensation was going to have to be</p> <p>22 paid in any transaction with Lehman?</p> <p>23 A. Not to my knowledge. What I did</p> <p>24 know and what was supplied as part of the data</p> <p>25 room was aggregate comp -- or individual</p>

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 compensation paid in respect to the 2007</p> <p>3 performance year at Lehman Brothers and in</p> <p>4 some respects prior years, as well as any</p> <p>5 guaranteed bonus commitments that they may or</p> <p>6 may not have -- may have entered into in</p> <p>7 respect of individuals currently in their</p> <p>8 employment.</p> <p>9 Q. Okay. Are you talking about</p> <p>10 the -- what later gets calls the Elite 8,</p> <p>11 those type of individuals, the highly</p> <p>12 compensated individuals?</p> <p>13 MR. GREEN: Object to form.</p> <p>14 A. I don't know -- I don't -- no, I</p> <p>15 don't -- can you repeat the question, please?</p> <p>16 Q. Well, you mentioned individual</p> <p>17 compensation. Are you talking about select</p> <p>18 individuals at Lehman or did you mean to cover</p> <p>19 a much broader category of people?</p> <p>20 MR. GREEN: In respect of what was</p> <p>21 provided in the due diligence rooms?</p> <p>22 MR. HINE: Yeah.</p> <p>23 A. The data room, the information I</p> <p>24 received, the compensation out of the data</p> <p>25 room was wide -- relatively wide ranging</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 stretching from in general terms the</p> <p>3 compensation plans that Lehman Brothers had in</p> <p>4 place and we obviously wanted to do some due</p> <p>5 diligence around the form and structure of</p> <p>6 those arrangements in respect of the initial</p> <p>7 proposed transaction that never took place.</p> <p>8 In addition, they supplied</p> <p>9 detailed individual compensation information</p> <p>10 and what they represented that to be was for</p> <p>11 the entire Lehman Brothers organization.</p> <p>12 Q. Okay.</p> <p>13 A. In respect of 2007 performance</p> <p>14 year, what they paid in the prior year,</p> <p>15 awarded the prior year, and in some cases</p> <p>16 before that.</p> <p>17 And in respect of individuals to</p> <p>18 whom they'd made contractual bonus commitments</p> <p>19 in connection with the 2008 performance year.</p> <p>20 Q. Okay. To your knowledge or</p> <p>21 understanding, were there any agreements</p> <p>22 reached as to compensation issues during that</p> <p>23 period of time?</p> <p>24 MR. GREEN: Object to form.</p> <p>25 Agreements as between who?</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 MR. HINE: It would seem to me</p> <p>3 Lehman and Barclays. And, again, we're</p> <p>4 talking about the period prior to</p> <p>5 September 15th.</p> <p>6 A. I have no direct knowledge of</p> <p>7 that.</p> <p>8 Q. Okay. Do you have any general</p> <p>9 understanding?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. I was not involved in those</p> <p>13 proceedings.</p> <p>14 Q. I know. I understand.</p> <p>15 Let's move to the period from</p> <p>16 September 15th to September 22nd which is the</p> <p>17 closing -- September 22nd is the closing of</p> <p>18 the Barclays Lehman deal. Were you</p> <p>19 involved -- I believe you said you had no</p> <p>20 involvement in those discussions; is that</p> <p>21 right?</p> <p>22 A. I had no involvement in the</p> <p>23 discussions, no.</p> <p>24 Q. Okay. Was Mr. Evans sent over to</p> <p>25 New York to participate in those discussions?</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: Object to the form.</p> <p>3 A. I believe Mr. Evans was in New</p> <p>4 York. In fact, I came to New York on or</p> <p>5 around that date. What he was involved with</p> <p>6 doing, I don't know.</p> <p>7 Q. Okay. But did you have any</p> <p>8 discussions with Mr. Evans or anyone else in</p> <p>9 senior management at Barclays about what was</p> <p>10 being discussed in terms of compensation with</p> <p>11 respect to the proposed Lehman/Barclays</p> <p>12 transaction?</p> <p>13 MR. GREEN: Object to form.</p> <p>14 A. I don't recall any specific</p> <p>15 conversation I may or may not have had with</p> <p>16 Mr. Evans or anyone else in that regard.</p> <p>17 Q. Do you have any general</p> <p>18 recollection of what you might have discussed</p> <p>19 with them during that period?</p> <p>20 A. I have no specific recollection.</p> <p>21 General recollection, if you're asking me to</p> <p>22 speculate what I would have talked about I</p> <p>23 could answer that but that would have been</p> <p>24 speculation.</p> <p>25 Q. I'm not really interested in what</p>



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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 you speculate you would have talked about.  
3 But do you recall any discussions between any  
4 of your senior Barclays management about what  
5 was being discussed or contemplated in  
6 connection with compensation-related issues  
7 concerning the Lehman Barclays proposed  
8 transaction?  
9 MR. GREEN: These are discussions  
10 between Paul and senior management  
11 you're asking about.  
12 MR. HINE: Yes.  
13 A. Sorry. So let me just be clear.  
14 You're asking do I know of any discussions  
15 that my senior management may have had with  
16 Lehman Brothers?  
17 Q. No, no, no. I'm asking did you  
18 have any conversations with senior management  
19 during that week, September 15th through  
20 September 22nd, about the compensation issues  
21 that were being discussed or considered in  
22 connection with the Lehman Barclays  
23 transaction?  
24 A. I don't recall anything specific.  
25 I do know that the initial sale agreement had

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 understanding during that period about the \$2  
3 billion compensation figure that appeared on  
4 the schedule that you had referenced earlier?  
5 MR. GREEN: Could you show him  
6 that figure?  
7 MR. HINE: Okay. Let's get to  
8 the -- let's get to that.  
9 MR. GREEN: Just so it's clear  
10 what we're talking about.  
11 MR. HINE: Let's get to the  
12 schedule.  
13 BY MR. HINE:  
14 Q. Mr. Exall, I'm going to hand you a  
15 copy of a document that's previously been  
16 marked as Exhibit 1 which is a copy of the  
17 Asset Purchase Agreement which I think you've  
18 been discussing. Just so you have it in front  
19 of you. And I'm also going to give you a copy  
20 of a document that's been marked as Exhibit 19  
21 which I understand is the schedule that is  
22 referenced in the APA. If you want just take  
23 a couple minutes to refresh -- review these  
24 documents and I'll ask you some questions.  
25 (Document review.)

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 been concluded by the time I had come to New  
3 York and was beginning to assist Mr. Evans in  
4 whatever he needed me to do. And it was my  
5 understanding that the transaction was closed  
6 at that point.  
7 Q. And at that point do you recall  
8 the date you were --  
9 A. I look back -- I think it was on  
10 or around the 20th or 21st of September that I  
11 came across. I forget the exact date but I  
12 believe it was on or around there.  
13 Q. Okay. So you thought the  
14 transaction had closed by then?  
15 A. It was my general understanding  
16 that the transaction for all intents and  
17 purposes had been completed the prior week. I  
18 have subsequently come to understand that  
19 there was a clarification agreement and  
20 officially the judge may have sanctioned at a  
21 later date. You know, the legalities for me  
22 are neither here nor there. My understanding  
23 is that the transaction had been concluded in  
24 all material respects at that point.  
25 Q. Okay. Did you have any

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 MR. GREEN: Are you ready, Paul?  
3 THE WITNESS: Yeah.  
4 Q. Now, my previous question had to  
5 do with the schedule. We'll call this the  
6 9/16 schedule if you will. Do you see the \$2  
7 billion compensation number in that schedule?  
8 A. I do.  
9 Q. Okay. Did you, during the week of  
10 September 15th to the 22nd say, did you have  
11 any conversations with any of Barclays senior  
12 management about that \$2 billion comp figure?  
13 A. I was made aware of this schedule  
14 during that week.  
15 Q. Um-hum.  
16 A. And I'm certain I would have asked  
17 someone questions with respect of the schedule  
18 and what I understood it -- you know, what I  
19 needed to interpret from it. But, yes, in  
20 general I would have had conversations with  
21 people on this.  
22 Q. Okay. And who gave you the  
23 schedule?  
24 A. Mr. Clackson passed me the  
25 schedule.

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1 P. EXALL - HIGHLY CONFIDENTIAL

2 Q. And what did he tell you about it?

3 A. He represented this as being the  
4 schedule referred to in the APA.

5 Q. Okay. And you were looking down.  
6 I think -- are you looking at Section 9.1(c)  
7 of the APA?

8 A. That is correct.

9 Q. Okay. So this Exhibit 19 is the  
10 schedule -- or you understood that the  
11 Exhibit 19 is the schedule referred to in  
12 paragraph 9.1(c) of the APA, correct?

13 MR. GREEN: Object to the form.

14 A. This is a copy of the schedule  
15 that was represented to me as being the  
16 schedule referred to, correct.

17 Q. Okay. What did Mr. Clackson tell  
18 you about that schedule?

19 MR. GREEN: Object to the form.

20 Asked and answered. You may answer.

21 A. I don't recall what he told me  
22 about it. I asked him for a copy of it as  
23 part of my own reading of the relevant  
24 sections of the APA.

25 Q. Okay. And you had been previously

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 provided a copy of the APA?

3 A. Yes.

4 Q. And who gave you that?

5 A. I believe Mr. Gary Romaine gave me  
6 a copy of the APA.

7 Q. Okay. And why did he give it to  
8 you?

9 MR. GREEN: Object to the form.

10 A. He understood there to be  
11 compensation related matters that I would  
12 probably be -- need to be aware of.

13 Q. Okay. And I take it you reviewed  
14 the APA after receiving a copy of it.

15 A. In general, yes. I can't testify  
16 to having read it in any great depth. I read  
17 I think the sections in relation to me and  
18 probably, to put a word on it, skimmed the  
19 rest.

20 Q. Okay. I'm not trying to be tricky  
21 here but is it fair to say you focused on  
22 Section 9.1 of the APA and probably skimmed  
23 the rest of it?

24 MR. GREEN: Object to the form.

25 You may answer.

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1 P. EXALL - HIGHLY CONFIDENTIAL

2 A. Yes. I think that would be  
3 reasonably accurate.

4 Q. Okay. Well, let's just take a  
5 look at 9.1 for a minute. If you wouldn't  
6 mind turning to 9.1(a). 9.1(a), as I  
7 understand it, has to do with Barclays  
8 offering employment to certain individuals who  
9 are defined as transferred employees.

10 Do you see that definition in  
11 there?

12 A. I see the term transferred  
13 employee referred to.

14 Q. Okay. Is that a term you're  
15 familiar with?

16 A. No.

17 Q. Well, I guess the reason I'm  
18 asking is you're charged with supervising  
19 compensation issues with respect to  
20 transferred employees, right?

21 MR. GREEN: Object to the form of  
22 the question. I think that

23 mischaracterizes his prior testimony.

24 A. I would say that part of my  
25 responsibility is in relation to compensation

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 of the former Lehman Brothers employees that  
3 Barclays Capital or Barclays acquired under  
4 the transaction. The meaning of transferred  
5 employee in the sense of this agreement or any  
6 other document I can't testify to not being a  
7 lawyer and I just have no legal understanding  
8 of that.

9 Q. Okay. So the term -- the defined  
10 term transferred employees is not something  
11 you use in the normal course of your business?

12 A. Not in the normal course of my  
13 business, no.

14 Q. Okay.

15 Do you know how many employees --  
16 well, let's just explore this for a minute.  
17 You work on compensation issues related to  
18 former Lehman employees who transferred to  
19 Barclays, correct?

20 A. Compensation of former Lehman  
21 employees that came to work for Barclays.

22 Q. Okay. Now, do you know how many  
23 of those folks there are?

24 A. I recall, and I'm approximating  
25 here, that there were in excess of 10,000

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 former Lehman Brothers employees that were  
3 sent the e-mail that -- in respect of coming  
4 to work for Barclays.  
5 Q. Okay. I think I've seen that but  
6 that's an e-mail where they respond accepted  
7 and they became a Barclays employee; is that  
8 right?  
9 A. Without seeing it I can't confirm  
10 that but in general terms they were sent an  
11 e-mail and that became -- and they arrived at  
12 work so, yes.  
13 Q. Do you know how the number of  
14 employees that came to work on September 22nd  
15 has changed over time? I mean, have -- what  
16 I'm asking about is have any of them left?  
17 A. Yes.  
18 Q. Okay. So do you have a general  
19 sense or do you have an understanding of the  
20 number that originally transferred on the 22nd  
21 versus the amount that are still here today?  
22 Still at Barclays today?  
23 MR. GREEN: Object to the form.  
24 A. I could give a rough estimate.  
25 Q. Okay.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 these two reduction in forces the number of  
3 former Lehman employees who are now working at  
4 Barclays has now been whittled down in the  
5 approximate amounts you've told me?  
6 MR. GREEN: Objection to form.  
7 A. That would be my best estimate.  
8 Q. Okay. And they received some form  
9 of severance if they were asked to leave?  
10 MR. GREEN: Object to the form.  
11 A. Any employee who leaves through  
12 reduction in force exercises are eligible for  
13 severance or consideration for severance.  
14 Q. Okay. And then if we look at  
15 paragraph 9.1(b) that paragraph has to do with  
16 severance, correct?  
17 A. Again, I can't interpret the  
18 paragraph in a legal manner.  
19 Q. Well, I'm not asking for a legal  
20 manner. I'm just asking for your general  
21 understanding.  
22 A. I see the term reduction in force  
23 or job elimination. I see those terms  
24 referenced here.  
25 Q. Well, here's my question. If you

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 A. Again, I don't know the exact, but  
3 we had two reduction in force exercises  
4 subsequent to the acquisition of Lehman  
5 Brothers. One in the fourth quarter of 2008  
6 and one in the first quarter of 2009.  
7 Again, I'll caveat this by saying  
8 I'm really guessing here.  
9 Q. Sure.  
10 A. But I believe to the best of my  
11 recollection at the moment, that of the 10,000  
12 that originally came across I'm guessing that  
13 approximately 6,000 would remain. And, again,  
14 that's -- that would be wide of the mark but  
15 it's a gut feel.  
16 Q. Okay. Now, these reduction in  
17 forces, were they related to the group -- the  
18 pool of former Lehman employees or are they a  
19 Barclays-wide reductions in force?  
20 A. Barclays Capital-wide reduction in  
21 force.  
22 Q. Okay. So it also affected folks  
23 who had never been employed at Lehman?  
24 A. Yes.  
25 Q. Okay. So -- and as a result of

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 review that paragraph -- and take as much time  
3 as you'd like -- it talks about making  
4 severance payments in connection with  
5 reductions in force or jobs eliminations.  
6 "Severance payments and benefits at levels  
7 that are no less favorable than such levels as  
8 the transferred employee would have been  
9 entitled to receive pursuant to the provisions  
10 of the seller's severance plans or  
11 agreements."  
12 Do you see that?  
13 A. I do.  
14 Q. Now, you've been involved in  
15 making severance payments to former Lehman  
16 employees who have left Barclays; is that  
17 right?  
18 A. That's correct.  
19 Q. Did you investigate what the  
20 practice had been at Lehman with respect to  
21 severance payments before making severance  
22 payments from Barclays?  
23 MR. GREEN: Object to the form.  
24 You're asking did he personally  
25 investigate what the practice had been

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 at Lehman Brothers?

3 MR. HINE: Yes.

4 A. Personally I did not as an  
5 individual investigating that. I do know that  
6 as a matter of course, and it was as part of  
7 this process, the severance policy previously  
8 applied by the former Lehman Brothers was  
9 determined and in most cases applied.

10 Q. And what is that policy?

11 A. I can't speak to the specifics.  
12 But, in general, severance payments to  
13 employees factor in their service at their  
14 previous employer, amongst other things. I  
15 don't know the specific -- I can't testify to  
16 the specific severance arrangements for the  
17 former Lehman Brothers employees or in that  
18 respect to Barclays Capital employees. I'm  
19 not an employee relations expert or a lawyer.  
20 But, in general, severance payments factor in  
21 prior service with the employer.

22 Q. Okay. Well, I guess my question  
23 is how do you know what to pay severance now  
24 for a former Lehman employee who's leaving  
25 without knowing the prior Lehman policy?

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 the former Lehman policy?

3 MR. GREEN: Object to the form.

4 And I think it mischaracterizes the  
5 testimony. He said he didn't know  
6 specifically the former Lehman policy.

7 A. I'm sorry. I do think you  
8 mischaracterized what I said. Maybe I wasn't  
9 clear. Personally I don't know the terms of  
10 the Lehman Brothers policy. I can't testify  
11 to that off the top of my head. I'm not a  
12 employee relations professional. In that same  
13 breath, I can't testify to a specific policy  
14 in relation to our own employees. What I do  
15 know is the HR department, relevant people in  
16 the HR department did investigate and  
17 understand the severance policy for the former  
18 Lehman Brothers. And in most cases I  
19 understand that to have been applied in  
20 respect to former Lehman Brothers employees.  
21 In the same way that the Barclays Capital  
22 policy would have been applied to former  
23 Barclays Capital employees who were affected  
24 by these reduction in force exercises.

25 Q. And were there some cases where

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1 P. EXALL - HIGHLY CONFIDENTIAL

2 MR. GREEN: Bill, excuse me. Not  
3 to disrupt your deposition but these  
4 questions, too, are beyond the scope of  
5 the 30(b)(6) notice in the sense that  
6 they do not specifically deal with the  
7 spreadsheet that was prepared and  
8 produced. And so you're asking Paul how  
9 he knows certain things that are beyond  
10 his job specifications and also outside  
11 of the information in the spreadsheet.

12 MR. HINE: Well, I hear your  
13 objection but I think this is probably  
14 within the scope of the 30(b)(6). He's  
15 here to testify about severance payments  
16 paid to former Lehman employees and the  
17 raw number in the spreadsheet is one  
18 thing but I'm trying to figure out how  
19 they calculate that number. So your  
20 objection can stand but my question  
21 still remains.

22 BY MR. HINE:

23 Q. How do you know or people in your  
24 department know how much to pay a former  
25 Lehman employee in severance if you don't know

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 the former Lehman policy was not applied?

3 A. I don't know for certain. It is  
4 my understanding that in most cases the former  
5 Lehman Brothers policy was applied to former  
6 Lehman Brothers employees.

7 Q. Okay. And who is the person  
8 within your HR department who would know  
9 specifically about this issue?

10 A. Our head of employee relations  
11 would be Mr. Mark Kerman who again reports to  
12 Mr. Evans. He's our head of employee  
13 relations in New York.

14 Q. And he's -- he has that role with  
15 respect to the entity that Mr. Diamond manages  
16 that you described earlier?

17 A. I don't know the specific  
18 agreement. My understanding is that he would  
19 have -- we would deal in any employee relation  
20 or severance matters, amongst others, in  
21 respect of US employees.

22 Q. Okay. I'm not trying to get into  
23 areas that you're not expert at. I just want  
24 to know is it correct to say your  
25 understanding is that this severance provision

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 has been complied with by Barclays with  
3 respect to former Lehman employees?  
4 MR. GREEN: Object to the form of  
5 the question. Calls for a legal  
6 conclusion.  
7 A. I don't know whether this or any  
8 other clause has been complied with.  
9 **Q. Okay.**  
10 A. I don't know what Barclays'  
11 obligations are under these. What I do know  
12 is that when individuals across the firm have  
13 been affected by a reduction in force exercise  
14 they are subject to -- for consideration to  
15 severance payments in the normal course of  
16 business.  
17 **Q. Okay. And I believe you said that**  
18 **you believe that's been done in accordance**  
19 **with the former Lehman's policies?**  
20 A. I believe that for former Lehman  
21 Brothers employees the former Lehman Brothers  
22 policy has been applied.  
23 **Q. Okay.**  
24 A. That's my understanding.  
25 **Q. Okay. Now, this provision, 9.1(b)**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 MR. GREEN: Object to form.  
3 Do you have the question in mind?  
4 THE WITNESS: I'm just re-reading  
5 the clause.  
6 A. Could you perhaps rephrase the  
7 question?  
8 **Q. Yeah. Let's try again.**  
9 **What is your understanding -- and**  
10 **I understand you're not a lawyer and I'm not**  
11 **asking for a legal conclusion as to this**  
12 **paragraph. But what is your understanding**  
13 **about the amount of bonuses that are supposed**  
14 **to be paid, were supposed to have been paid to**  
15 **former Lehman employees who now are with**  
16 **Barclays?**  
17 A. I don't understand anything in  
18 respect of this clause that refers to any  
19 amount, quantum of bonus whatsoever.  
20 **Q. Well, but it does refer to the**  
21 **schedule, right?**  
22 A. It refers to a schedule, yes.  
23 **Q. Okay. And what did you understand**  
24 **that to mean when it refers to that schedule?**  
25 MR. GREEN: Object to the form of

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 doesn't refer to the schedule that we talked  
3 about earlier, right, that September 16th  
4 schedule?  
5 MR. GREEN: Object to the form.  
6 A. I don't see any specific reference  
7 to it.  
8 **Q. Okay. Now, if we turn to 9.1(c)**  
9 **that has to do with bonus payments, correct?**  
10 **In general?**  
11 MR. GREEN: Object to the form of  
12 the question.  
13 A. Again, I can't interpret the  
14 clause. I see the word bonus, annual bonuses  
15 reflected in the clause. But as to what it  
16 may or may not refer to I really can't testify  
17 in any legal capacity.  
18 **Q. I understand. I'm not asking for**  
19 **your legal interpretation. I'm asking as a**  
20 **general matter as a person charged with**  
21 **compensation issues and working with this**  
22 **stuff. Do you have a general understanding of**  
23 **what this provision (c) entails in connection**  
24 **with bonuses that were to be paid to former**  
25 **Lehman employees?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 the question. Calls for a legal  
3 conclusion.  
4 A. It refers to a schedule. And the  
5 schedule, itself, does not have the word bonus  
6 anywhere on it.  
7 **Q. Okay.**  
8 A. So I can't reach a conclusion as  
9 to any -- in any capacity, personal, private,  
10 on behalf of the company, as to what quantum  
11 of bonus may or may not be referred to in this  
12 clause.  
13 **Q. Okay. I understand. I'm not**  
14 **asking for a legal interpretation. But in the**  
15 **course of preparing the spreadsheet that we're**  
16 **going to talk about and your work in**  
17 **connection with compensation related to these**  
18 **former Lehman employees, what did you**  
19 **understand the \$2 billion was supposed to**  
20 **cover?**  
21 MR. GREEN: Object to the form of  
22 the question.  
23 **Q. And when I say \$2 billion I'm**  
24 **referring to the 2 billion in the schedule,**  
25 **the September 16th schedule.**

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MR. GREEN: Object to the form of the question.

A. Again -- and to reiterate, I cannot pass a legal opinion as to what the obligations of Barclays may or may not be. It is my personal view, and that may be different to the views of Barclays or anyone else in Barclays that \$2 billion is referred to as comp. And my understanding in a personal capacity is that refers to compensation in all its forms.

**Q. In all its forms. Meaning what?**

A. In respect of pre-acquisition service of the former Lehman Brothers employees.

**Q. What do you mean by compensation in all its forms?**

A. Again, I'm speaking in my personal capacity as opposed to on behalf of Barclays. Their definition of compensation may be different than mine.

I understand personally compensation to mean any manner of awards and payments and reward to employees in general

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**P. EXALL - HIGHLY CONFIDENTIAL**

that would encompass things like salary, annual bonus, deferred stock, deferred cash. Benefits. Pensions. Recruit -- you know, I would say that there's no standard definition of what is termed as compensation in either the accounting environment or in the human resources environment. But my personal understanding is that compensation is any form of a award delivered to or on behalf of a employee. Or to their benefit.

**Q. Okay. I really didn't ask the definition of compensation. I'm trying to find out what in preparing the spreadsheet that we're going to talk about today and in your work in connection with providing compensation to the former Lehman employees, is that \$2 billion supposed to cover more than bonuses?**

MR. GREEN: Object to the form of the question. I think you did ask about his understanding of the term compensation to begin with so I think the lead-in to your question was inappropriate. But, nevertheless, you

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**P. EXALL - HIGHLY CONFIDENTIAL**  
can answer the question.

A. I can testify to the schedule, itself, that's the subject of this deposition which reflects the compensation delivered, the wide discharge of compensation delivered to former Lehman Brothers employees in respect of their pre-acquisition service to Lehman Brothers.

**Q. But, Mr. Exall, you have no understanding of what that \$2 billion was supposed to encompass in connection with compensation to former Lehman employees?**

A. I don't see it defined in the agreement and I can't interpret it.

**Q. Okay. When you were asked to prepare the schedule, were you told that it should total up to \$2 billion?**

A. No.

**Q. Were you told what the amount is that in aggregate were supposed to have been paid in any form of compensation to former Lehman employees?**

A. No.

**Q. Do you have any understanding of**

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**P. EXALL - HIGHLY CONFIDENTIAL**  
the amount of compensation that's supposed to be paid to former Lehman employees?

A. No.

**Q. Further into this paragraph you see -- and I'm reading starting on the seventh line down onto the eighth line it talks about forms and proportions as are consistent with purchaser's customary practices.**

And it's referring to the annual bonuses. Do you see that sentence?

A. I do.

**Q. What is -- just based on your experience at Barclays, what is form and proportions -- or what is Barclay's customary practice with respect to annual bonuses?**

MR. GREEN: Object to the form of the question as to the extent it calls for a legal conclusion.

A. Our customary practice prior to 2008 in terms of annual bonus awards at Barclays Capital --

**Q. Right.**

A. -- in general their annual bonuses were delivered in the form of either cash or

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 cash and stock.  
3 **Q. Right.**  
4 A. Whereby above a certain threshold  
5 an amount of the annual bonus was deferred or  
6 delivered through a stock vehicle which would,  
7 based at the time, through a tax table kind of  
8 approach so above a certain threshold a  
9 proportion was deferred or delivered in stock  
10 and beyond a certain -- another step more  
11 stock was delivered.  
12 **Q. Okay. And was this -- when you**  
13 **said tax table you threw me there. What did**  
14 **you mean there?**  
15 A. Sorry. It's a term I use. I  
16 shouldn't use it. We colloquially refer to it  
17 as a tax table. It's in effect if your bonus  
18 is X, then there is no deferral into stock.  
19 If it's above a certain threshold, a certain  
20 proportion of the entire bonus is delivered in  
21 stock. If it's above another threshold,  
22 further proportion of that bonus is delivered  
23 in stock.  
24 **Q. Okay. And as a general matter**  
25 **what percentage of bonus is provided in stock?**

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 let's say, as an example, if you had a hundred  
3 pounds of an amount deferred into stock,  
4 vesting over four years, if -- you can either  
5 have pro rata vesting which is you could take  
6 a quarter, a quarter, a quarter, and 25 would  
7 accrue at the end of one, 25 after -- et  
8 cetera.  
9 Cliff vesting means that it only  
10 vests at the end of the period concerned. So  
11 you'd only get the full hundred in this  
12 example at the end of the fourth year.  
13 **Q. And it was a custom to have a**  
14 **three-year cliff vest period for stock**  
15 **bonuses?**  
16 A. It was our custom, yes.  
17 **Q. All right. And has this changed**  
18 **since 2008? You said prior to 2008.**  
19 A. 2008 was a unique year for  
20 compensation and we delivered at Barclays  
21 Capital -- at Barclays in a different way  
22 subject to a different type of arrangement.  
23 **Q. Are you talking about the former**  
24 **Lehman employees when you say that or --**  
25 A. No. They were subject to our

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 A. In general, our customary practice  
3 prior to 2008 was that any bonus -- and there  
4 were regional fluctuations here based on the  
5 exchange rate -- so I will quote this in  
6 pounds. Any bonus below 150,000 pounds  
7 sterling there was no deferral or no delivery  
8 in stock. Any amounts above 150,000 pounds  
9 but below 250,000 pounds of annual bonus,  
10 10 percent of the entire amount was delivered  
11 in stock. Any amounts over and above 250,000  
12 pounds, the first 250,000 pounds were  
13 delivered -- 10 percent of that was delivered  
14 in stock. Any amount above 250,000 25 percent  
15 was delivered in stock.  
16 **Q. And this stock vested over time?**  
17 A. That's correct. Subject to the  
18 rules of the stock -- of the plan itself, the  
19 standard practice was to cliff vest at the end  
20 of a three-year period.  
21 **Q. Okay. I saw that term cliff vest.**  
22 **What does many mean?**  
23 A. In general that means that it  
24 vests in equal tranches, so to speak, so some  
25 of our competitors in a stock award would --

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 standard practice that was employed prior to  
3 this.  
4 **Q. Okay. So as a general matter, and**  
5 **I know there's individuals, but as a general**  
6 **rule this practice -- the prior practice that**  
7 **you just described was applied to the former**  
8 **Lehman employees that came to work at**  
9 **Barclays?**  
10 A. I believe that to be the case yes,  
11 in most cases, yeah.  
12 (Deposition Exhibit 280B, document  
13 bearing production number  
14 BCI-EX-00077287, marked for  
15 identification as of this date.)  
16 (Deposition Exhibit 281B, document  
17 bearing production number  
18 BCI-EX-00115843, marked for  
19 identification as of this date.)  
20 BY MR. HINE:  
21 **Q. Mr. Exall, I'm handing you two**  
22 **exhibits. One is marked as Exhibit 280B which**  
23 **is Bates stamped BCI-EX-00077287 which I**  
24 **understand to be the original version of the**  
25 **schedule that was provided to us. And the**

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 second document is marked as Exhibit 281B  
3 which is Bates stamped BCI-EX-00115843 which,  
4 Chris, I think you'll agree is the updated  
5 schedule that was recently provided to us.

6 My first question, Mr. Exall, have  
7 you ever seen these documents before?

8 A. Yes.

9 Q. You prepared these documents?

10 A. I did.

11 Q. Okay. I want to -- and am I  
12 correct that 281B is an updated replacement  
13 version of 280B?

14 A. Yes.

15 Q. Okay. Before we put away 280B  
16 could you explain to me the differences and  
17 why you had to update it?

18 A. Sure. 280B as you referred to  
19 here was the original schedule provided around  
20 the middle of July I understand. It reflected  
21 what we believed to be an accurate picture of  
22 the discharge of compensation to previous --  
23 former Lehman Brothers employees in respect of  
24 their prior pre-acquisition service.

25 It was thought to be accurate at

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 that time, although we were still  
3 investigating certain items reflected on the  
4 schedule. Subsequent to those investigations  
5 and the correction of a couple of  
6 typographical errors as well as some of the  
7 text was cut off from the narrative on the  
8 right-hand side of the original schedule, the  
9 updated schedule reflects a more accurate --  
10 an accurate picture of the discharge of those  
11 compensation items as of the date it was  
12 produced.

13 Q. Okay. Now, other than typos is it  
14 fair to say the main differences have to do  
15 with severance entries?

16 A. Yes.

17 Q. Okay. Just take a step back a  
18 minute. Why was this schedule -- and I'll  
19 refer to them generically now, why was this  
20 schedule prepared?

21 A. The schedule was prepared in the  
22 normal course of business to support the -- or  
23 for production to -- primarily for production  
24 to PriceWaterhouseCoopers as part of their  
25 annual audit as well as any ancillary filings

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 they may or may not have had to provide as  
3 part of their normal course of business as  
4 auditors of Barclays.

5 Q. Okay. So this is someone from PwC  
6 requested a schedule of compensation related  
7 to the Lehman acquisition?

8 A. I was instructed that this would  
9 be needed in support of the annual audit and  
10 other related filings by my finance  
11 colleagues.

12 Q. Who told you that?

13 A. Mr. Romaine.

14 Q. Romaine?

15 A. Gary Romaine.

16 Q. Okay. And he is -- what was his  
17 position?

18 A. I believe -- I don't know -- I  
19 can't recall his exact title but he's a  
20 technical accountant in the finance  
21 department.

22 Q. Okay. He's not in the HR  
23 department, correct?

24 A. No, no.

25 Q. So is it correct to say that the

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 finance department requested this type of  
3 schedule from your department?

4 A. Mr. Romaine requested it of me,  
5 yes.

6 Q. Okay. Any other purpose behind  
7 this other than to assist PwC?

8 A. No. The primary purpose of this  
9 was to assist PwC.

10 Q. Any other purposes?

11 A. I think we in general in support  
12 of our own internal accounting records would  
13 have prepared the schedule. But the primary  
14 purpose would be to support the annual audit  
15 and regulatory filings that were required.

16 MR. GREEN: Bill, I'm sorry.

17 Could we go off the record for one  
18 second?

19 MR. HINE: Sure.

20 (Discussion held off the record.)

21 BY MR. HINE:

22 Q. Mr. Exall, I think you had  
23 something you wanted to clarify?

24 A. If you could repeat that question  
25 in respect of why the schedule was prepared



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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 I'll try to answer.  
3 Q. I know you told me that the  
4 primary purpose was for -- in support of PwC  
5 work but I asked if there were any other  
6 purposes for which the schedule was prepared.  
7 A. No. My clarification doesn't  
8 relate to that specific question. It relates  
9 to the use of the schedule by PwC. I misspoke  
10 in the sense that I think -- I believe I  
11 said -- perhaps you could read it back -- I  
12 don't know --  
13 MR. GREEN: That's okay. You can  
14 just go right ahead.  
15 A. I incorrectly -- believe I stated  
16 the schedule would have been used by PwC for  
17 ancillary, regulatory and other filings. The  
18 clarification I would like to make is that the  
19 firm at Barclays would have utilized the  
20 information for ancillary related filings.  
21 And PwC as auditors would in most cases I  
22 understand have required support for those  
23 filings for which the schedule provides.  
24 Q. Has Barclays, in fact, used the  
25 information on this schedule for regulatory

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 statements?  
3 A. Yes.  
4 Q. Okay.  
5 A. Sorry. Can I clarify that?  
6 Q. Sure.  
7 A. When you referred to this  
8 schedule, a form of this schedule or a  
9 predecessor thereof would have been used and  
10 supplied to PwC as part of their annual audit  
11 process. In respect of the final report of  
12 accounts. That occurred several months ago.  
13 And this schedule as you've seen has evolved  
14 since then.  
15 Q. Well, that's my question. Has  
16 Barclays produced an annual report as of  
17 December 31st, 2008, correct?  
18 A. That's correct.  
19 Q. Now, is this schedule that I have  
20 in front of me the schedule that was used in  
21 connection with compensation issues with  
22 respect to that final report or is there an  
23 earlier version of this schedule?  
24 MR. GREEN: Object to the form of  
25 the question.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 filings?  
3 A. I believe so. I don't know the  
4 specific names of it but I believe they have.  
5 Not the schedule in any regulatory filing, I  
6 believe. I don't know the answer. I  
7 understand that it may have been used in a  
8 process that produced some sort of regulatory  
9 filing.  
10 Q. Okay. Do you know which filing?  
11 A. I would be speculating.  
12 Q. Well, go ahead and speculate.  
13 A. Okay. In my -- I believe  
14 something to do with the Section 6 or  
15 something. It's a regulatory filing I  
16 wouldn't just have any knowledge of.  
17 Q. Okay. But --  
18 A. But I think there have been  
19 regulatory filings that have been made by  
20 Barclays.  
21 Q. Okay. Has the information from  
22 this spreadsheet been used in connection with  
23 Barclays' preparation of its annual report?  
24 A. Yes.  
25 Q. Or its annual financial

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 A. An earlier version of this  
3 schedule would have been in existence at the  
4 time.  
5 Q. Okay. So just tell me -- let's  
6 just be specific here. 280B was prepared at  
7 or about what date?  
8 A. This was I understand supplied to  
9 yourselves on or around the middle of July  
10 2009.  
11 Q. Okay. Now, the question -- my  
12 question was when was it prepared by you.  
13 A. The specific spreadsheet?  
14 Q. Yes. 280B.  
15 A. This exact spreadsheet would have  
16 been prepared by me on or around that date.  
17 This exact spreadsheet.  
18 Q. Mid July.  
19 A. Mid July.  
20 Q. Okay.  
21 A. That said, this spreadsheet  
22 existed in previous forms for a period of time  
23 well before that.  
24 Q. Okay. And how often do you update  
25 it?

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**P. EXALL - HIGHLY CONFIDENTIAL**

A. There was no regular requirement to update it. There were certain points of time that an update was required and as part of the -- whether it be the annual report from PriceWaterhouse or anything else in respect of what they were looking at or passing an opinion on. So there are points in time at which a schedule would have been updated and presented formally to them. I know they've had a copy I believe of this schedule. I'm not sure whether they have a copy of 281B.

**Q. So when you said this schedule you meant 280B?**

A. I meant 280B, yes.

**Q. Okay. Now, did you start preparing a schedule in this form or like this starting in September of 2008?**

A. I don't recall the exact time when we first produced the -- a first iteration of the schedule or its predecessor without guessing or consulting prior records, but what I can say is that this schedule was -- or its predecessor would have been prepared in Q4 2008.

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**P. EXALL - HIGHLY CONFIDENTIAL**

**Q. All right. Was either 280B or 281B prepared in any way in connection with the discovery we're undertaking here in this litigation?**

MR. GREEN: Object to the form of the question to the extent it calls for a legal conclusion.

A. That is not my understanding.

**Q. Okay. Were you ever asked to prepare a schedule in response to discovery requests in this case?**

A. No.

**Q. Okay. So this is something you had -- were you ever asked to alter these schedules or modify them in any way with respect to providing discovery in this case?**

MR. GREEN: Object to the question to the extent it invades communications between counsel and client.

**Q. I'm not asking you any discussions you may have had with attorneys in connection with this schedule. But were you ever asked to modify this schedule that you've been -- I take it you've been maintaining this schedule**

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**P. EXALL - HIGHLY CONFIDENTIAL**

**Q. Okay.**

A. During that period, yes.

**Q. Okay. And it's gone on through a couple iterations between Q4 '08 and mid July of '09; is that right?**

A. Of course.

**Q. Okay. And the iteration following the mid July version which is Exhibit 280B, what I have in front of me as 280B -- 281B?**

A. 281B, yes.

**Q. Okay. Were there no iterations between these two?**

A. That was the iteration.

**Q. Okay.**

A. We updated this Schedule 280B. It's now become 281B.

RQ MR. HINE: Okay. Chris, we're going to request copies of all these iterations going back to the fourth quarter of '08 just as part of our document requests.

MR. GREEN: We'll take that request under advisement.

MR. HINE: Okay.

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**for several months now, correct?**

A. That would be correct.

**Q. Since fourth quarter of '08, right?**

A. Yes.

**Q. Were you ever asked to modify the schedule in response to anything that was taking place in this litigation here in the US?**

A. Not to my recollection.

**Q. Okay. Were you ever told in any way that the amount of comp at the bottom, you'll see at the bottom of 280B it totals to 1.999 billion. Could you see that?**

A. Yes.

**Q. Were you ever told that that number should be 2 billion when all was said and done you should get down to 2 billion at the end?**

A. No.

**Q. I'm not talking in connection with this litigation. I'm just asking in general. Did anyone ever tell you that the total amount of compensation should total about \$2 billion?**

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 A. I was asked to prepare the</p> <p>3 schedule in respect of detailing the discharge</p> <p>4 of our obligations to former Lehman Brothers</p> <p>5 employees in respect of their prior service</p> <p>6 and compensation for their prior service for</p> <p>7 Lehman Brothers. And this is what the</p> <p>8 schedule represents. It's items relating to</p> <p>9 pre-acquisition services.</p> <p>10 Q. Okay. But were you ever told that</p> <p>11 it should be a total of \$2 billion?</p> <p>12 A. No.</p> <p>13 Q. Do you have any understanding of</p> <p>14 how this schedule and the compensation listed</p> <p>15 in this schedule relates to the 9/16 balance</p> <p>16 sheet or the schedule we looked at previously?</p> <p>17 MR. GREEN: The Exhibit 19?</p> <p>18 Q. Exhibit 19.</p> <p>19 A. The only reference point between</p> <p>20 schedules 280B and 281B and the schedule you</p> <p>21 have as Exhibit 19 is the OBS compensation</p> <p>22 accrual line which is reflected on both 280B</p> <p>23 and 281B. The source referenced here is the</p> <p>24 APA which references the \$2 billion described</p> <p>25 as comp on Exhibit 19.</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 Q. Okay. So let's look at</p> <p>3 Exhibit 281B. I don't want to confuse the</p> <p>4 record here.</p> <p>5 A. Okay.</p> <p>6 Q. 281B is the most recent version of</p> <p>7 this schedule, right?</p> <p>8 A. That's correct.</p> <p>9 Q. Just so I understand what you just</p> <p>10 said, when you see on the -- OBS Compensation</p> <p>11 Accrual, OBS stands for opening balance sheet;</p> <p>12 is that right?</p> <p>13 A. Yes. That's my understanding.</p> <p>14 Q. Okay. And the source for the \$2</p> <p>15 billion number is the APA, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And by that you mean the source</p> <p>18 for the \$2 billion is Exhibit 19 that we just</p> <p>19 pointed to?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. So now how do you -- I just</p> <p>22 want to walk through preparing this schedule.</p> <p>23 How do you get from the \$2 billion number --</p> <p>24 how do you break it into 17 -- into</p> <p>25 1.7 billion in cash versus 300 million in</p>
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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 equity?</p> <p>3 A. I was requested by Mr. Romaine</p> <p>4 to -- for accounting purposes to estimate the</p> <p>5 stock component of any such compensation that</p> <p>6 may total 2 billion with the assumption that</p> <p>7 we applied -- oh, sorry. Let me say it again.</p> <p>8 I was asked to estimate the stock</p> <p>9 potential of any compensation that may be</p> <p>10 represented by this 2 billion.</p> <p>11 Q. Okay.</p> <p>12 A. And the 300 million is an estimate</p> <p>13 based on historic norms and experience under</p> <p>14 the Barclays Capital stock deferral scheme.</p> <p>15 Q. Is that the scheme we talked about</p> <p>16 earlier, the normal practice of Barclays?</p> <p>17 A. That is correct, yes.</p> <p>18 Q. Okay. And when did he ask you to</p> <p>19 do this?</p> <p>20 A. I believe it's a technical</p> <p>21 accounting matter. And it's really a question</p> <p>22 for Mr. Romaine.</p> <p>23 MR. GREEN: I'm sorry. Did you</p> <p>24 say when or why?</p> <p>25 MR. HINE: Why.</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 MR. GREEN: Oh, I'm sorry.</p> <p>3 A. It's a technical accounting matter</p> <p>4 in respect of how the -- my understanding is</p> <p>5 how the acquisition is accounted for in the</p> <p>6 books and records of Barclays PLC. I don't</p> <p>7 know the technical aspects behind it.</p> <p>8 Q. Okay. Just a general question.</p> <p>9 Has this allocation between cash and equity</p> <p>10 changed at all since the fourth quarter of '08</p> <p>11 when you first started preparing the schedule</p> <p>12 to the present?</p> <p>13 A. Not to my recollection. Again,</p> <p>14 that would have to be something for Mr.</p> <p>15 Romaine.</p> <p>16 Q. Okay. And again I'm happy if you</p> <p>17 tell me it's someone else's department. I'm</p> <p>18 not trying to get you to testify about things</p> <p>19 you have no knowledge about.</p> <p>20 A. No, I understand.</p> <p>21 Q. In the next -- could you just tell</p> <p>22 in the general structure here. You have</p> <p>23 payments -- I see payments in future and other</p> <p>24 items. Payments are cash outflows or expenses</p> <p>25 that have already taken place?</p>

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MR. GREEN: Object to the form.

**Q. That's a bad question but --**

A. My understanding is that these were amounts that had been either paid in cash or awarded in equity or paid as severance at the time that this spreadsheet had been prepared.

Payable in the future I understand to be things that in most cases have not yet been paid and were due and payable at a future time through some sort of timing issue, et cetera; whereas, other items were things that were economic costs to Barclay PLC that were related to awards that had already been made.

I guess you could actually categorize the other items -- actually, the way they're represented here the ISP awards you could actually have recategorized that as payments. And payroll taxes, you could categorize that as payable in the future.

**Q. I see. When I -- again, just to compare 280B and 281B I see in the first entry under Payment it says Pre -- on 281B it says Pre 22/9 Payroll Items and in 280B is says**

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behalf of individuals.

**Q. Okay. Just so I understand it, these are Lehman employees who were ex-pats at the time of the acquisition who had some regulatory obligation to foreign authorities or other authorities and Barclays paid that; is that right?**

MR. GREEN: Objection to form.

You can answer.

A. That is my understanding.

**Q. Okay. And how much of this 12 million is that?**

A. I estimate it to be approximately \$7 million.

**Q. And that money didn't go to the individuals; it went to some regulatory authority, correct?**

A. That's my understanding.

**Q. Okay. And then what's the balance, the 7 from the 12?**

A. The balance of 5 -- as I said, there were two items. The balance of the 5 relates to payrolls that -- for former Lehman Brothers employees that were due and payable

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**22/2. Is that just a typo?**

A. Yes, it is.

**Q. Okay. So back to 281B. What does this entry encompass?**

A. There are two general components to the \$12 million I believe you're referring to.

**Q. Um-hum.**

A. In general, the first is a series of payments made by Barclays on behalf of former Lehman Brothers employees that were expatriates. So these are payments made to tax authorities in other jurisdictions -- or it may have been the US jurisdiction but in the UK and other international jurisdictions in respect of their pre-acquisition service.

These were liabilities that effectively would have been for Lehman Brothers but Barclays took on those liabilities and funded them and made good on those payments.

**Q. These are payments to the individuals or to regulatory authorities?**

A. To regulatory authorities on

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on and around the date of the bankruptcy. Those payables are not going to be made. They were liabilities for the former Lehman Brothers. They were payables that were not going to be paid. My understanding was there was no cash to make them. As part of the ordinary course of business to take on those employees Barclays agreed to fund those payrolls in respect of those pre-acquisition services.

**Q. Okay. Just so I understand the pool of people we're talking about, you're talking about payroll -- payroll amounts that were due to the Lehman employees who came to Barclays?**

A. Yes.

**Q. You're not talking about -- this does not include payroll that was owed to Lehman employees who stayed with Lehman, correct?**

A. That's not my understanding.

**Q. We have a double negative there.**

A. Yeah. There's a double negative.

It's my understanding those

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 amounts relate to payroll in respect to former  
3 Lehman Brothers employees in respect of their  
4 pre-acquisition services but these employees  
5 were employees that transferred or became  
6 employees of Barclays Capital.  
7 Q. Okay. So it's only folks who  
8 transferred to Barclays, correct?  
9 A. That is my understanding in most  
10 cases.  
11 Q. Okay. When you say  
12 pre-acquisition services, what do you mean?  
13 Can I just use my colloquial term and you tell  
14 me whether I'm right or wrong. Is this base  
15 salary that was owed to these folks as of  
16 September 22nd?  
17 MR. GREEN: Object to the form of  
18 the question. Do you mean --  
19 Q. Well, let me back up.  
20 MR. GREEN: This specific  
21 component of the first entry is what  
22 you're talking about?  
23 MR. HINE: I'm talking about the  
24 \$5 million out of the 12 million that  
25 we've been talking about.

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2 throughout the year.  
3 A. That's my understanding.  
4 Q. Okay. And so is this 5 million  
5 payments to those folks up to September 22nd  
6 or does it go beyond September 22nd?  
7 A. I don't recall the exact dates. I  
8 don't know the exact dates to which the  
9 payroll related. I do know that they were the  
10 payrolls that were due and payable at the time  
11 that the acquisition was happening. The risk  
12 was -- and this was the commercial risk --  
13 that these employees that were going to come  
14 to work for Barclays were not going to get  
15 paid for that month by Lehman Brothers. They  
16 would have had no monthly salary not being  
17 employed by Barclays at that time. So this  
18 was a make-good, I guess goodwill gesture by  
19 Barclays to fund the payroll to ensure the  
20 smooth transition into the new structure.  
21 Q. Okay. So presumably most of these  
22 employees have been paid August 31st and this  
23 is for the period of September for which they  
24 worked?  
25 MR. GREEN: Objection to the form

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2 MR. GREEN: Right.  
3 Q. Is that what I've seen referred to  
4 as base salary?  
5 A. Not only. I would suggest without  
6 reviewing the records in detail or  
7 investigating in general, if you're talking  
8 payroll, you're talking any base salary paid  
9 to the individual amongst other things that  
10 are payroll related.  
11 Q. Like what?  
12 A. Benefits, pensions. Anything that  
13 may or may not -- or that may be part of an  
14 individual's monthly salary or related items.  
15 Q. I understand. But it's not bonus.  
16 It's not annual bonuses, right?  
17 A. That's not my understanding, yes.  
18 Q. We've got a double negative.  
19 A. My understanding is that that was  
20 a payroll item and I do not believe that there  
21 were any - as you term them - annual bonus  
22 payments incorporated in that.  
23 Q. When you say a payroll item you're  
24 talking about the weekly or biweekly or  
25 monthly checks that these folks were getting

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 of the question.  
3 A. I don't know that for certain but  
4 I believe that to be the case.  
5 Q. Okay. But when I see the title it  
6 says Pre-September 22nd payroll items, my  
7 question is does that 5 million continue these  
8 payroll items all the way to the end of the  
9 year or is it just for the period in  
10 September? Do you understand my question?  
11 A. They do not relate to any payments  
12 for the rest of the year.  
13 Q. Okay. So the 5 million is just to  
14 bring these employees up to September 22nd; is  
15 that right?  
16 A. I can't testify to whether the  
17 22nd of September is the exact date but what I  
18 can tell you is that is for their salary and  
19 related items as per a payroll that was due  
20 and payable at the time in and around the  
21 acquisition. So whether that was the 23rd or  
22 the 25th of September I can't testify. I  
23 don't know the exact dates.  
24 Q. Okay. But assuming the date of  
25 around September 22nd, this item, the \$5

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 million, does not include payments for  
3 October, November and December for those  
4 employees; is that right?

5 A. That is right.

6 **Q. Okay. The next item we see is**  
7 **replacement RSUs. Could you tell us what that**  
8 **is?**

9 A. RSU is an acronym to stand for  
10 restricted stock units.

11 **Q. Okay. And what are they?**

12 A. They are effectively in general  
13 stock awards made to individuals that are  
14 restricted in the sense that they either do  
15 not vest immediately or can't be sold  
16 immediately.

17 **Q. Okay. Now, these are a form of**  
18 **compensation that Lehman had previously used?**

19 A. Yes.

20 **Q. Okay. Did Barclays previously use**  
21 **these?**

22 A. Yes, we have.

23 **Q. Okay. Now, I see that you cite**  
24 **here \$11 million and I just want to read your**  
25 **source. It says new RSUs granted as**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 the bankruptcy, Barclays' goodwill gesture in  
3 respect of that employee would have been to  
4 give them a stock award to the value of 50 in  
5 Barclays stock.

6 **Q. So it's in Barclays stock now.**

7 A. It's in Barclays stock but relates  
8 to the value of stock awarded prior to the  
9 acquisition by Lehman Brothers.

10 **Q. And that's based on the value of**  
11 **Barclays stock as of around September '08,**  
12 **correct?**

13 A. That's normal practice, yes.

14 **Q. And does this vest over a period**  
15 **of time?**

16 A. It would have, yes. I don't know  
17 the specific vesting for this particular award  
18 but that would be the normal course of events,  
19 yes.

20 **Q. Would it be the three-year cliff**  
21 **vest that you mentioned earlier?**

22 A. It may or may not have been.  
23 Often -- in many cases we will mirror the  
24 original vesting of an award at a previous  
25 employer with a replacement award. I can't

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **replacements for ex-Lehman employees granted**  
3 **to them in 2008 prior to the acquisition.**

4 So just explain to me what's going  
5 on here. This is Barclays replacing some RSUs  
6 that Lehman had previously granted to its  
7 employees?

8 MR. GREEN: Object to form. You  
9 may answer.

10 A. There was a population of people  
11 that were given stock awards by Lehman  
12 Brothers earlier in 2008. At the time of the  
13 acquisition the value of those awards had  
14 declined to zero.

15 **Q. Right.**

16 A. For these specific employees it  
17 was decided that as a goodwill gesture,  
18 Barclays would give restricted stock awards in  
19 respect of that zero -- that original award  
20 now valued at zero in effect to split the loss  
21 50/50.

22 So as a hypothetical example if  
23 the individual had been -- received an award  
24 of stock to the value of \$100 from Lehman  
25 Brothers that had gone to zero at the time of

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2 testify to what the vesting period because I  
3 don't know it for this particular award.

4 **Q. Okay. Well, if it vested over**  
5 **time, would it be entered on the balance sheet**  
6 **for this year?**

7 A. Sorry. Excuse me?

8 **Q. If it had vested over time would**  
9 **it be entered on the acquisition balance sheet**  
10 **for this year?**

11 MR. GREEN: Object to the form of  
12 the question. You may answer if you  
13 know.

14 A. I believe that's a technical  
15 accounting question. I believe the answer to  
16 be yes but I can't pass an exact accounting  
17 opinion. You should refer that to Mr.  
18 Romaine.

19 **Q. Okay. And when you say this is a**  
20 **goodwill gesture are you saying that Barclays**  
21 **wasn't obligated to do this under the APA?**

22 MR. GREEN: Objection to the form  
23 of the question. It calls for a legal  
24 conclusion.

25 A. I don't know what the APA

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 specifically obligated Barclays or anyone else</p> <p>3 to do. I do know that this is a goodwill</p> <p>4 gesture for those employees. That's my</p> <p>5 understanding of that award.</p> <p>6 Q. Okay. And are these very senior</p> <p>7 employees?</p> <p>8 A. I believe they are -- there are --</p> <p>9 I -- hum. I would categorize them as</p> <p>10 employees -- I would suggest -- my</p> <p>11 recollection is actually that they're a range</p> <p>12 of employees. There were some senior</p> <p>13 employees and some junior employees in that.</p> <p>14 I don't think that they were specifically</p> <p>15 targeted as the senior group. They were a</p> <p>16 group of people that had received awards at</p> <p>17 Lehman Brothers.</p> <p>18 Q. Whoever happened to be in the pool</p> <p>19 of people who received an award.</p> <p>20 A. In the specific grouping, yes.</p> <p>21 Q. The next entry -- well, another</p> <p>22 question on that. Why is that not in the</p> <p>23 equity column, that 11 million?</p> <p>24 A. I don't know.</p> <p>25 Q. Do you think it should be or is it</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 just a -- it's not paid in cash, right?</p> <p>3 A. My understanding it was stock</p> <p>4 awards.</p> <p>5 Q. Okay. You don't know why it's</p> <p>6 in --</p> <p>7 A. No.</p> <p>8 Q. Okay. You have to answer either</p> <p>9 yes or no. If you shake your head --</p> <p>10 A. Oh, sorry. I don't know why.</p> <p>11 Q. The next entry is Bonus Concluding</p> <p>12 Social Tax. Could you tell me what you mean</p> <p>13 by social tax? What is that?</p> <p>14 A. My interpretation of social tax</p> <p>15 would be -- my understanding would be these</p> <p>16 are any ancillary taxes that would be due and</p> <p>17 payable to various regulatory authorities in</p> <p>18 respect of any annual bonus payment at any</p> <p>19 point in time in whatever jurisdiction they</p> <p>20 have to be made in.</p> <p>21 Q. So is this like withholding tax?</p> <p>22 Income tax?</p> <p>23 A. Not personal income tax, no.</p> <p>24 Q. Oh. Just any --</p> <p>25 A. Let me characterize it again.</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Where withholdings are required, yes, they</p> <p>3 would be included in that number. It would</p> <p>4 also include whatever benefits may or may not</p> <p>5 be derived from any annual incentive payment</p> <p>6 that is made. So I believe one of those to be</p> <p>7 FICA in the US.</p> <p>8 Q. Okay. So this would -- this</p> <p>9 figure of 1.529 billion includes all of that</p> <p>10 type of regulatory requirements, correct?</p> <p>11 A. That's my understanding, yes.</p> <p>12 Q. Okay. And when you say bonus</p> <p>13 here, these are annual bonuses?</p> <p>14 MR. GREEN: Object to the form.</p> <p>15 Q. Well, let me show you another</p> <p>16 document. Maybe that helps me ask the</p> <p>17 question better.</p> <p>18 (Pause on the record.)</p> <p>19 Q. While we're trying to find the</p> <p>20 document, do you see in the source it says TCR</p> <p>21 27 Feb 2009?</p> <p>22 MR. GREEN: 23rd Feb?</p> <p>23 Q. 23 Feb.</p> <p>24 A. TCR is an acronym for our internal</p> <p>25 on-line compensation review system. It stands</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 for total compensation review. The date 23</p> <p>3 February 2009 relates to the date the data</p> <p>4 were extracted from that system from which</p> <p>5 this -- that element of the schedule was</p> <p>6 prepared.</p> <p>7 Q. Okay. So this is just a database</p> <p>8 where you track compensation payments to</p> <p>9 employees?</p> <p>10 A. In effect, yes.</p> <p>11 Q. Oh, okay. And would that data</p> <p>12 have changed since February of '09 up until</p> <p>13 the date you prepared this?</p> <p>14 MR. GREEN: Object to the form.</p> <p>15 A. I don't believe so. The</p> <p>16 compensation round had closed at that point.</p> <p>17 Q. Okay.</p> <p>18 A. Whilst there may be movements of</p> <p>19 items subsequent to that, I think that data</p> <p>20 extract is accurate.</p> <p>21 Q. When you say the compensation</p> <p>22 round had been concluded, is there like an</p> <p>23 annual schedule for the award of bonuses at</p> <p>24 Barclays?</p> <p>25 MR. GREEN: Object to the form.</p>

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A. Yes. There's a normal cycle that is followed.

Q. Okay. So are you saying that they've been awarded by February 23rd and they probably didn't change between then and now?

A. At the 23rd of Feb the cash amounts would have been distributed through the payroll. The equity awards, the value thereof would have been fixed.

Q. Okay.

A. The equity awards I don't believe had been formally made in terms of the amount of stock units at that point. But the value of those awards had been fixed.

Q. But you're relatively confident that there's been no substantial changes from February 23rd to the present.

A. Yes, I am.

Q. Okay. Let me hand you a copy of an exhibit that's been previously marked as 216 which is a copy of a contract between Barclays and Mr. Lowitt. I'm just going to use this as an example so I don't expect that you're familiar with the terms but if you want

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A. Yes.

Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus.

Do you see that?

A. I do.

Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet?

A. Yes.

Q. Okay. Is there anything else on Mr. Lowitt's contract that would be part of that \$1.5 billion figure?

A. If I take Mr. Lowitt as the example, the [REDACTED] referred to in the contract as being 2008 guaranteed cash bonus would be part of the [REDACTED] number reflected as cash in that line.

Q. Okay.

A. The EPP -- 2008 EPP recommendation to the value of [REDACTED] as reflected in the contract, would be included in the \$258 million number.

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to just take a minute to take a look at it.

(Document review.)

MR. GREEN: Bill, while he's looking at I should say that as I'm sure you know this entire deposition is designated highly confidential.

MR. HINE: Highly confidential.

MR. GREEN: And don't expect any redesignation because it's all about comp.

MR. HINE: I understand. I understand.

MR. GREEN: So it will remain that way.

MR. HINE: Well, I think our agreement is we'll treat it as all highly confidential and you guys let me know if have you any re-designations.

MR. GREEN: Right.

MR. HINE: So that's fine.

MR. GREEN: Right.

BY MR. HINE:

Q. Mr. Exall, have you had a chance to look at this document?

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Q. I see. Okay.

A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well.

Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct?

A. That's correct.

Q. Okay. And how about where you see he has a special cash award, is that in that entry on the spreadsheet?

A. No, it is not.

Q. Okay. Where would I find that entry on the spreadsheet?

A. It is not on the spreadsheet.

Q. Okay. So what is the special cash award that I see several senior executives from -- former Lehman executives getting?

MR. GREEN: Object to the form of



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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 the question.</p> <p>3 A. My understanding of these special</p> <p>4 cash awards is that they are retention awards</p> <p>5 subject to future service of the employee.</p> <p>6 They do not relate to pre-acquisition services</p> <p>7 performed for Lehman Brothers in relation to</p> <p>8 these individuals. Consequently, they're not</p> <p>9 on the schedule.</p> <p>10 Q. Okay. So just so -- I was</p> <p>11 confused about that.</p> <p>12 So where I see special cash award</p> <p>13 and various contracts that is to encourage the</p> <p>14 individual to stay at Barclays for a period of</p> <p>15 time, correct?</p> <p>16 MR. GREEN: Object to the form.</p> <p>17 You may answer.</p> <p>18 A. That is my understanding of their</p> <p>19 retention award.</p> <p>20 Q. When you say retention award</p> <p>21 that's an inducement for them to stay a period</p> <p>22 of time; is that right?</p> <p>23 A. Yes. That's my understanding.</p> <p>24 Q. Okay. And then -- and because</p> <p>25 that was not meant to compensate them for work</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 they had done at Lehman it's not part of your</p> <p>3 spreadsheet; is that right?</p> <p>4 A. Totally not related to the</p> <p>5 pre-acquisition service supplied by Lehman</p> <p>6 Brothers and consequently are not on the</p> <p>7 schedule.</p> <p>8 Q. Okay. So this schedule is only</p> <p>9 relating to pre-acquisition services that</p> <p>10 former Lehman employees performed for Lehman;</p> <p>11 is that right?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. All right. Thank you for</p> <p>14 clarifying that.</p> <p>15 While we're on Mr. Lowitt's</p> <p>16 contract, again we'll use it an example but do</p> <p>17 you see the provision that says termination</p> <p>18 other than for cause?</p> <p>19 A. I see the provision.</p> <p>20 Q. And that lays out certain benefits</p> <p>21 that he's entitled to if he gets terminated</p> <p>22 without cause. Is that what I would call a --</p> <p>23 is that a severance payment?</p> <p>24 MR. GREEN: Take your time to read</p> <p>25 the provision before you answer just to</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 make sure your answer is addressed to</p> <p>3 the question.</p> <p>4 (Document review.)</p> <p>5 A. Can you repeat the question?</p> <p>6 Q. Well, why don't we do this. We're</p> <p>7 going to get to some entries called severance</p> <p>8 on your spreadsheet so we'll come back to that</p> <p>9 question.</p> <p>10 A. Yes.</p> <p>11 Q. It has to do with severance so</p> <p>12 let's just postpone that question.</p> <p>13 Let's go back to your spreadsheet.</p> <p>14 The next entry I see is IBD Grad</p> <p>15 Programs. Could you tell me what that is?</p> <p>16 A. These -- the IBD grad program is</p> <p>17 the graduate program implemented by the</p> <p>18 former -- well, we had one at Barclays Capital</p> <p>19 but the majority of the -- well, all the</p> <p>20 people reflected on here are the former Lehman</p> <p>21 Brothers graduates that were working in the</p> <p>22 investment banking division of Lehman Brothers</p> <p>23 that came on as part of the acquisition. The</p> <p>24 payments related to them are reflected here in</p> <p>25 respect of their pre-acquisition service.</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 These were made in June of 2009.</p> <p>3 That is a quirk -- I term it a quirk. It's</p> <p>4 market practice for Lehman Brothers graduate</p> <p>5 program to pay their annual bonuses to the</p> <p>6 graduates at midyear. It's different to the</p> <p>7 policy that we had at Barclays Capital. We</p> <p>8 stuck to this -- their policy in respect of</p> <p>9 the US graduates.</p> <p>10 Q. These are investment banking</p> <p>11 division employees who went to grad school and</p> <p>12 is this a payment to the grad school for the</p> <p>13 school?</p> <p>14 A. No, no, no. These are payments to</p> <p>15 the individuals. The graduate program as --</p> <p>16 these are people as you pointed out are</p> <p>17 graduates that we recruited off campus to come</p> <p>18 and work for us. They're on the former</p> <p>19 graduate program within investment banking.</p> <p>20 And their compensation is -- I would term it</p> <p>21 as being quite rigorously standardized in the</p> <p>22 sense that there's a lot of competition in the</p> <p>23 market for these individuals and there's quite</p> <p>24 a standardized form of compensation paid to</p> <p>25 them. And they're on the specific program</p>

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 that is different to let's say non-graduate  
3 employees.

4 Q. So this isn't a bonus. This is a  
5 compensation -- this is an extra form of  
6 compensation to them because they went to  
7 graduate school?

8 A. No. It's an extra form of  
9 compensation because they're on the graduate  
10 program and as part of that program they're  
11 entitled to certain awards at certain points  
12 in time. June 2009 being the point in time at  
13 which they were entitled to them.

14 Q. Okay. I guess I'm just not  
15 understanding that. You've recruited them out  
16 of -- Lehman has recruited them out of a grad  
17 school and this is a payment they get as an  
18 extra incentive to come work for Lehman?

19 MR. GREEN: Objection to form.

20 You may answer.

21 A. This is for all intents and  
22 purposes in general their annual bonus, okay?  
23 Their timing is different than the general  
24 population for whatever reason. That's  
25 standard practice at -- it was standard

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 practice at Lehman -- the cycle of their bonus  
3 awards or payments were midyear. Whereas  
4 everyone else it's year end.

5 Q. Okay. But they are still in grad  
6 school still?

7 A. No, no. They have left grad  
8 school. They're all graduates. But they're  
9 part of our formal graduate program having  
10 been recruited from grad school.

11 Q. Okay. And how are they eventually  
12 transitioned from this program into becoming a  
13 regular -- like, how do they transition to the  
14 normal bonus cycle?

15 A. I can't speak for the exact Lehman  
16 policy but in general my understanding of the  
17 graduate program that we have is that they  
18 rotate for a certain period of time within the  
19 business in which they work. They learn their  
20 business. They, you know, work, they learn,  
21 et cetera. And as and when they -- the  
22 graduate program is generally a finite amount  
23 of time. In Barclays Capital traditionally it  
24 was 18 months. The graduates did a bunch of  
25 rotations in various business areas and they

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 were either employed or not employed at the  
3 end of that cycle by Barclays Capital.

4 Q. Okay. So --

5 A. But I -- if the Lehman Brothers  
6 scheme is the same in general as the Barclays  
7 Capital scheme, that's how think I would  
8 transition into what I would term as the  
9 general population.

10 Q. Okay. I think I understand it.  
11 So this is -- these are folks who had been in  
12 this graduate program as of September 22nd and  
13 now are able to continue in that same program  
14 at Barclays?

15 A. Yes. That's my understanding of  
16 it.

17 Q. Okay. So the \$11 million here is  
18 in lieu of an annual bonus for them?

19 A. It's exactly the same for all  
20 intents and purposes as any other compensation  
21 delivered to any other ex-Lehman employee.  
22 It's just that the timing is different.

23 Q. Well, do they also receive a base  
24 salary?

25 A. Yes, they do.

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1 P. EXALL - HIGHLY CONFIDENTIAL

2 Q. Okay. So they have a base salary  
3 and then an additional amount paid in or  
4 around June of every year; is that correct?

5 A. That's correct.

6 Q. And is this only the additional  
7 amount or does this also include the base  
8 salary?

9 A. This is the additional amount.

10 Q. And where does their base salary  
11 fall?

12 A. In the normal books and records of  
13 Barclays Capital.

14 Q. So that would be up in the first  
15 item, the \$5 million we talked about earlier?

16 MR. GREEN: Object to the form.

17 A. I would say that insofar as the  
18 IBD graduates may or may not have -- may have  
19 been in the payrolls that Barclay made good  
20 the answer would be yes.

21 In general, I don't believe -- I  
22 believe that most of those investment banking  
23 graduates were not part of that payroll cycle  
24 and consequently any salary paid to them  
25 pre-acquisition would have been borne -- the

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 costs would have been borne by Lehman Brothers</p> <p>3 and post acquisition would have been borne by</p> <p>4 Barclays Capital in the normal course of</p> <p>5 business. And those payments would not be</p> <p>6 reflected in the schedule.</p> <p>7 Q. Okay. So this \$11 million for IBD</p> <p>8 graduates is only -- does not include the base</p> <p>9 salary component of their compensation.</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. It only includes the</p> <p>12 portion of their compensation that they</p> <p>13 receive every June. Or thereabouts.</p> <p>14 A. It reflects what was paid to them</p> <p>15 in June 2009.</p> <p>16 Q. Okay. And --</p> <p>17 A. In respect of their</p> <p>18 pre-acquisition service for Lehman Brothers.</p> <p>19 Q. So it's paid to them in June of</p> <p>20 2009 but it relates to their work up until</p> <p>21 September of 2008?</p> <p>22 A. Yes.</p> <p>23 Q. And how about their work from</p> <p>24 September onward?</p> <p>25 A. This again comes back to the</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 difference in treatment between a graduate and</p> <p>3 a non-graduate. As I mentioned before,</p> <p>4 graduate compensation is quite highly specific</p> <p>5 and regulated within specified bands and it's</p> <p>6 run in a different way to compensation for</p> <p>7 non-graduates. Consequently, these amounts</p> <p>8 would have been June payable almost</p> <p>9 irrespective of the performance of the</p> <p>10 graduate.</p> <p>11 So by the fact that we employed</p> <p>12 them as part of the acquisition those would</p> <p>13 have been paid in any event. It's simply a</p> <p>14 timing issue.</p> <p>15 Q. Well, does it mean that some of</p> <p>16 that 11 million relates to work that they did</p> <p>17 after September?</p> <p>18 A. I don't believe so to be the case.</p> <p>19 Q. You don't think so?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. Because I believe as I mentioned</p> <p>23 before that those amounts would have been June</p> <p>24 payable to these graduates in any event.</p> <p>25 Irrespective of their service. These are --</p>
Page 108	Page 109
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 as I said, their compensation is treated</p> <p>3 somewhat differently to compensation among</p> <p>4 non-graduates.</p> <p>5 Q. Okay. And are they informed that</p> <p>6 this is their annual bonus?</p> <p>7 MR. GREEN: Object to the form of</p> <p>8 the question.</p> <p>9 A. I haven't seen what was given to</p> <p>10 them as part of their graduate program.</p> <p>11 Q. Okay. If we go back to the bonus</p> <p>12 in the previous entry, the \$1.529 billion,</p> <p>13 does any of that encompass work that were</p> <p>14 performed by former Lehman employees since</p> <p>15 they've come to Barclays? In other words,</p> <p>16 after September 22nd?</p> <p>17 MR. GREEN: Object to the form.</p> <p>18 Asked and answered.</p> <p>19 A. This schedule represents</p> <p>20 compensation paid to former Lehman Brothers</p> <p>21 employees in respect to their pre-acquisition</p> <p>22 services for Lehman Brothers.</p> <p>23 Q. So am I correct to say that \$1.529</p> <p>24 billion does not relate in any way to work</p> <p>25 these individuals performed for Barclays after</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 September 22nd?</p> <p>3 A. That is my understanding, yes.</p> <p>4 Q. And so in certain employment</p> <p>5 contracts if I see anything relating to a 2009</p> <p>6 bonus recommendation you're saying that would</p> <p>7 not be in this \$1.259 billion number?</p> <p>8 A. No, it wouldn't. It would not be</p> <p>9 in that number.</p> <p>10 Q. Okay.</p> <p>11 A. Well, could you show me an example</p> <p>12 if you want to be specific?</p> <p>13 Q. I'm not sure I have one but I --</p> <p>14 A. I mean, if I refer back to Mr.</p> <p>15 Lowitt's contract it talks about a 2008</p> <p>16 guaranteed cash bonus and a 2008 EPP</p> <p>17 recommendation.</p> <p>18 Q. Right.</p> <p>19 A. Those amounts are included on the</p> <p>20 spreadsheet. Had there been two additional</p> <p>21 clauses referring to 2009 cash and stock,</p> <p>22 those would not have been on the schedule.</p> <p>23 Q. Okay. That was my question.</p> <p>24 Now, when you see on his contract</p> <p>25 he has a -- if you see on there it says</p>

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **compensation he has a base salary of [REDACTED].**  
3 **Do you see that?**  
4 A. Yep. I do.  
5 **Q. Is that on your spreadsheet at all**  
6 **within any entries?**  
7 A. No.  
8 **Q. And why is that?**  
9 A. Because that salary would have  
10 been paid to him post-acquisition. The  
11 schedule does not reflect any post-acquisition  
12 obligations.  
13 **Q. I understand. So that is**  
14 **compensation he's receiving for work he's**  
15 **performing for Barclay post-acquisition.**  
16 A. That would be correct. The only  
17 way that that -- some of that [REDACTED] would  
18 have been part of this schedule is if it was  
19 part of the pre-2009 payroll we discussed  
20 previously.  
21 **Q. I understand. Okay.**  
22 **The next entry you'll see is**  
23 **entitled Severance. Could you tell me what**  
24 **that is meant to cover?**  
25 A. That relates to payments and

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 individuals and related items on a  
3 name-by-name-basis reflecting these items  
4 totalling these amounts on the schedule.  
5 **Q. Okay. Now, these individuals came**  
6 **to work for Barclays at or around September**  
7 **22nd and had left since then?**  
8 A. These are former Lehman Brothers  
9 employees that came and worked for Barclays  
10 and then were part of the reduction in force  
11 exercises, yes.  
12 **Q. Okay. So they're not -- that list**  
13 **does not include people who ever came to**  
14 **Barclays at all.**  
15 A. That's not my -- I believe that to  
16 be the case, yes.  
17 **Q. Okay. So if they received**  
18 **severance it was from Lehman, not Barclays,**  
19 **correct?**  
20 MR. GREEN: Object to the form of  
21 the question. You can answer if you  
22 know.  
23 A. I don't know.  
24 **Q. Okay. Fair enough.**  
25 A. I don't know.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 ancillary -- payments to individuals.  
3 Withholding taxes and ancillary liabilities in  
4 respect of the reduction in force exercise  
5 implemented in Q4 2008 and Q1 2009 in respect  
6 of former Lehman Brothers employees.  
7 **Q. Okay. When I see RIF in the**  
8 **source that's reduction in force?**  
9 A. That acronym stands for reduction  
10 in force, yes.  
11 **Q. And what does that VIG stand for?**  
12 A. I don't know what VIG actually  
13 stands for. It is meant to refer to the Q1  
14 2009 reduction in force exercise.  
15 **Q. So RIF refers to the fourth**  
16 **quarter '08 reduction in force?**  
17 A. That's my understanding.  
18 **Q. And the second acronym refers to**  
19 **the first quarter of '09 reduction?**  
20 A. That's my understanding.  
21 **Q. Okay. And you got lists of --**  
22 **what do your lists show from HR? I see a**  
23 **reference from HR.**  
24 A. We maintained -- we, HR,  
25 maintained databases of payments made to

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **Q. And how was their severance**  
3 **calculated?**  
4 A. The standard severance policy of  
5 Lehman Brothers was applied in respect to --  
6 in most cases in respect of former Lehman  
7 Brothers employees and the application of that  
8 policy resulted in severance payments being  
9 calculated and awarded to individuals  
10 concerned.  
11 **Q. Okay. Now, this is -- these**  
12 **severance payments are separate from the bonus**  
13 **payments we talked about earlier.**  
14 A. Yes, they are.  
15 **Q. Okay. So these are -- is it**  
16 **correct all of these payments have been made**  
17 **to people who no longer work for Barclays,**  
18 **correct?**  
19 A. Yes.  
20 **Q. Now, why in the entry do we have**  
21 **some severance and it looks like it's payable**  
22 **in the future? Do you see the entry I'm**  
23 **talking about? The \$27 million?**  
24 A. I do.  
25 **Q. What is that meant to cover?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. These are meant to cover exactly  
3 the same thing in that they are severance  
4 related to former Lehman Brothers employees  
5 that are part of the reduction in force  
6 exercise. But these are amounts that had not  
7 at the time of the production of the schedule  
8 either been paid or had been reconciled fully  
9 to the extent that they had -- we can trace  
10 the item to a payroll.  
11 Q. Can you explain that last part to  
12 me.  
13 A. For the most part these amounts  
14 have been paid. Have actually been discharged  
15 and the cash has left the account. The 27  
16 million reflect payments that have not as yet  
17 been made. All are still in the process of  
18 being reconciled.  
19 Q. Meaning negotiating with the  
20 individuals leaving?  
21 A. No. Reconciling between what  
22 people originally estimated their -- an  
23 individual severance to be and what they were  
24 eventually paid on the payroll. There may be  
25 differences between those two points.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. I don't have a specific -- I don't  
3 have specific knowledge as to how the two are  
4 tied together or not as the case may be. I'm  
5 not qualified to interpret that. What I can  
6 say is that again these are severance related  
7 to former Lehman Brothers employees related to  
8 their service with Lehman pre-acquisition.  
9 Q. Okay. In the Future Severance  
10 entry in your note you talk about the RIF and  
11 VIG list from HR and then you write, "And  
12 includes 25 percent for benefits for RIF."  
13 What does that refer to?  
14 A. We have made an estimate in these  
15 amounts in this 27 million in respect of, as I  
16 mentioned earlier, payments that may be due  
17 and payable to regulatory bodies in respect of  
18 benefits or people that are on salary  
19 continuation. So these are people that don't  
20 get their severance upfront, they take it over  
21 a period of time, and they're still covered by  
22 benefits. So those are payments, estimates in  
23 respect of the benefit amounts that they're  
24 still covered for during the period of their  
25 severance.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 Q. So am I correct to say that that  
3 27 million entails either a reconciliation  
4 issue that you just mentioned or something  
5 that's been promised to someone after they  
6 left but that's payable in the future.  
7 A. That's my understanding, yes.  
8 Q. Okay. So if I wanted to know the  
9 total amount of severance paid to former  
10 Lehman employees or to be paid to former  
11 Lehman employees I would add up the 238 and  
12 the 27 million, correct?  
13 A. Yes. And that would cover not  
14 only the payment made to individuals and the  
15 withholding associated with those but also an  
16 estimate for ancillary benefits and amounts  
17 that may be payable on those amounts to  
18 various regulatory bodies.  
19 Q. So do you have any understanding  
20 whether these severance entries related in any  
21 way to the clause 9.1(c) of the APA that we  
22 discussed earlier which talked about bonuses?  
23 MR. GREEN: Object to the form to  
24 the extent it calls for a legal  
25 conclusion.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 Q. So is it correct to say 25 percent  
3 of the 27 million is that type of benefit?  
4 A. I don't know if that's the exact  
5 calculation. I haven't got an answer for  
6 that.  
7 Q. Okay. If you refer back to  
8 Exhibit 19 are these severance payments part  
9 of the \$2 billion in comp that you see listed  
10 there or do you have any understanding about  
11 that?  
12 MR. GREEN: Object. Calls for a  
13 legal conclusion.  
14 A. I don't know what that represents.  
15 So I can't say whether those services are  
16 included or not.  
17 Q. When you said that you were  
18 pointing to the \$2 billion on figure 19?  
19 A. Described as comp, yes.  
20 Q. Oh, okay. When I looked at the  
21 prior version, 280B, it says Severance 2 as  
22 the title. Or is that just a typo?  
23 A. Typo.  
24 Q. Okay. And now you might have  
25 covered this already but how did the severance

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **figures change from the time you prepared the**  
3 **first version of this -- or version marked as**  
4 **280B versus the most recent version?**  
5 **I mean, I see they've gone down in**  
6 **terms of the payment severance version but**  
7 **they've gone up -- oh, no. I guess they've**  
8 **gone down in both instances.**  
9 **MR. GREEN: Object to the form.**  
10 **A. Could you just restate that**  
11 **question?**  
12 **Q. If I compare the two severance**  
13 **entries on Exhibit 280B with 281B it's fair to**  
14 **say the severance numbers have reduced,**  
15 **correct?**  
16 **A. That is correct.**  
17 **Q. And my question is why.**  
18 **A. If you aggregate them I believe**  
19 **the Schedule 280B, the amounts of severance**  
20 **total \$314 million. On Schedule 281B they**  
21 **total \$265 million. That's approximately a**  
22 **\$40 million difference.**  
23 **Is that right?**  
24 **\$50 million difference. Excuse**  
25 **me.**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **what original severances were estimated to be**  
3 **for individuals versus what was actually**  
4 **processed and paid ultimately to those**  
5 **individuals.**  
6 **And in the cross-comparisons of**  
7 **the original database to the payroll we**  
8 **discovered that people had been estimated to**  
9 **receive severances substantially in excess to**  
10 **what they actually received. So the**  
11 **difference between A and B is a reduction as**  
12 **you see reflected on the schedule.**  
13 **Q. Okay. Is any of the difference**  
14 **between these two schedules -- the severance**  
15 **entries on these two schedules the result of**  
16 **any kind of change in policy at Barclays as to**  
17 **severance payments?**  
18 **A. Not at all.**  
19 **Q. Okay. And who would I ask if I**  
20 **really wanted specifics on that question?**  
21 **That would be --**  
22 **MR. GREEN: On which question?**  
23 **Q. On just severance payments.**  
24 **A. On policy or specific severance**  
25 **payments?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **MR. GREEN: Forty-nine.**  
3 **A. \$49 million. Okay.**  
4 **The reason for the movement --**  
5 **there are two reasons in general. One was a**  
6 **pure error on the spreadsheet. There were**  
7 **amounts paid -- there were amounts of**  
8 **severance that were paid to individuals that**  
9 **were included both in the bonus including**  
10 **social tax line and in the severance line.**  
11 **That related to approximately \$28 million that**  
12 **if I refer back to 280B that \$28 million was**  
13 **reflected in the 261 and was reflected in the**  
14 **1,529.**  
15 **Q. So you're just removing the double**  
16 **counting.**  
17 **A. We removed the double count and**  
18 **moved it to the second schedule which we**  
19 **discovered for the reconciliation award.**  
20 **Q. Okay.**  
21 **A. The other reduction of the**  
22 **additional, what? -- \$21 million relates to a**  
23 **full -- a more full reconciliation of the**  
24 **severances yet to be paid. As I mentioned**  
25 **earlier, we were in the process of reconciling**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **Q. Both.**  
3 **A. On policy I think you could direct**  
4 **both sets of questions through to Mr. Kerman.**  
5 **Q. Okay.**  
6 **A. Although he's not responsible for**  
7 **payroll. You know, he may or may not pass**  
8 **that question on.**  
9 **Q. But when you get the lists from**  
10 **HR, is he the person preparing those lists?**  
11 **A. No. It would be -- it's prepared**  
12 **by, you know, people within HR function.**  
13 **Q. Okay.**  
14 **A. He doesn't prepare them, no.**  
15 **Q. Well, does he supervise those who**  
16 **prepare them?**  
17 **A. He's the head of employee**  
18 **relations. I don't know whether he**  
19 **particularly supervised the preparation of**  
20 **these databases. He knows of their existence.**  
21 **Q. But am I correct -- I mean, as**  
22 **you've described it, it seems to be -- the**  
23 **difference in the two schedules appears to me**  
24 **to be just reconciling accounting errors or**  
25 **reconciliation type errors; is that right?**

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 MR. GREEN: Object to form.</p> <p>3 A. The errors -- well, the two items</p> <p>4 represent a double count of particular</p> <p>5 individuals.</p> <p>6 <b>Q. Right.</b></p> <p>7 A. Which were clear errors in the</p> <p>8 production of the original spreadsheet. As</p> <p>9 well as a further reconciliation as to</p> <p>10 estimated severance amounts versus actual</p> <p>11 payments to former Lehman Brothers employees.</p> <p>12 The reconciliation effort is a -- you know,</p> <p>13 was -- is a joint effort between HR and</p> <p>14 finance professionals.</p> <p>15 <b>Q. Okay. Now, if we looked at your</b></p> <p>16 <b>spreadsheets over time which you said you</b></p> <p>17 <b>started preparing them in the fourth quarter</b></p> <p>18 <b>of '08, is it fair to assume that the</b></p> <p>19 <b>severance numbers would have increased over</b></p> <p>20 <b>time?</b></p> <p>21 MR. GREEN: Object to the form.</p> <p>22 A. I don't recall.</p> <p>23 <b>Q. I mean, the more people leave, the</b></p> <p>24 <b>more gets paid out in severance and these</b></p> <p>25 <b>numbers increase, correct?</b></p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 A. I would be speculating. It sounds</p> <p>3 plausible but I can't answer directly. I</p> <p>4 don't have the previous schedules in front of</p> <p>5 me.</p> <p>6 <b>Q. Okay. Well, my question is how do</b></p> <p>7 <b>you know that these severance payments are</b></p> <p>8 <b>made in respect of work they did at Lehman</b></p> <p>9 <b>when they've been working for Barclays for six</b></p> <p>10 <b>or eight months now? Where's the cutoff?</b></p> <p>11 MR. GREEN: Object to the form.</p> <p>12 A. In general, severance payments are</p> <p>13 based on previous service at an employer. The</p> <p>14 vast majority of any individual receiving a</p> <p>15 severance, the vast majority of their previous</p> <p>16 service would have been in respect of Lehman</p> <p>17 Brothers, services rendered to Lehman</p> <p>18 Brothers.</p> <p>19 <b>Q. So in preparing this schedule</b></p> <p>20 <b>which is only supposed to reflect service or</b></p> <p>21 <b>costs associated with their service at Lehman,</b></p> <p>22 <b>you're assuming that the entire amount of</b></p> <p>23 <b>severance paid to these individuals is in</b></p> <p>24 <b>respect of their service at Lehman; is that</b></p> <p>25 <b>right?</b></p>
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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 A. That is what I am assuming on the</p> <p>3 schedule, correct.</p> <p>4 <b>Q. And theoretically at some point</b></p> <p>5 <b>any severance payment they received should</b></p> <p>6 <b>also include a component that relates to their</b></p> <p>7 <b>work at Barclays, right?</b></p> <p>8 MR. GREEN: Object to the form.</p> <p>9 A. Just repeat that question, please.</p> <p>10 <b>Q. Well, theoretically over time if</b></p> <p>11 <b>these folks worked for Barclays for a period</b></p> <p>12 <b>of time, a portion of their severance has to</b></p> <p>13 <b>be allocated to the work they did at Barclays</b></p> <p>14 <b>as opposed to Lehman, right?</b></p> <p>15 A. That would be correct.</p> <p>16 <b>Q. Okay. But you haven't made that</b></p> <p>17 <b>allocation in preparing this spreadsheet?</b></p> <p>18 A. I don't believe so. I can't</p> <p>19 answer for my -- I believe that these</p> <p>20 represent amounts paid to individuals for</p> <p>21 their pre-acquisition service.</p> <p>22 <b>Q. Okay. The next entry talks about</b></p> <p>23 <b>the payroll tax on equity compensation.</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Could you explain to me what that</b></p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>is?</b></p> <p>3 A. Those would be amounts due and</p> <p>4 payable to relevant tax authorities once the</p> <p>5 equity awards reflected on the schedule are</p> <p>6 vested and become vested by the employees.</p> <p>7 <b>Q. So is this the three-year cliff</b></p> <p>8 <b>vest you talked about?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. So three years from now there will</b></p> <p>11 <b>be some kind of obligation to regulatory</b></p> <p>12 <b>authorities based on individuals' receipt of</b></p> <p>13 <b>their stock bonus?</b></p> <p>14 A. That's my understanding.</p> <p>15 <b>Q. And the 1.79 percent what is that</b></p> <p>16 <b>based on?</b></p> <p>17 A. That's an estimate made by finance</p> <p>18 based -- you'd have to ask them. My</p> <p>19 understanding is it's based on a blended rate</p> <p>20 of tax which is standard practice across</p> <p>21 Barclays Capital.</p> <p>22 <b>Q. Okay. And then what is that --</b></p> <p>23 <b>1.9 percent of what?</b></p> <p>24 MR. GREEN: 1.79 percent you mean?</p> <p>25 <b>Q. I'm sorry. 1.79 percent of what?</b></p>

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**P. EXALL - HIGHLY CONFIDENTIAL**

A. It relates to the \$258 million of -- in the equity column of bonuses including social taxes. I should point out here if you do a calculation of 1.79 on the 258 you don't get 9.

**Q. Right. That's my question.**

A. The difference is the growth in the Barclays stock price subsequent to the award being made. The tax will be payable, due and payable, based on the ultimate value of those awards when the vest. So that 9 could increase over time.

**Q. Well, so this 1.79 assumes a growth in the value of the stock that's vesting over that three-year period, right?**

A. The 1.79 is the blended -- my understanding is that the 1.79 is the blended rate applied to the equity award respect of tax.

**Q. Right.**

A. You will notice that's being increased by a multiple of 2 on the spreadsheet.

**Q. Right.**

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**P. EXALL - HIGHLY CONFIDENTIAL**

Barclay stock price.

**Q. Okay. And now this \$9 million doesn't get paid to former Lehman employees, right? It gets paid to regulatory authorities around the globe?**

A. Yes.

**Q. The next entry talks about acquisition buyout vesting over two years.**

**Do you see that?**

A. I do.

**Q. [REDACTED]. What is that meant to encompass?**

A. As described here, it's a bonus relating to pre-acquisition performance by an individual or individuals that worked for Lehman Brothers and now work for Barclays. These are commitments that we assumed and embodied in contracts in respect of this individual or individuals to deliver this [REDACTED] over the next two years.

**Q. Okay. Now, let's turn back to Mr. Lowitt's contract.**

A. Yeah.

**Q. Do you see the special cash award**

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**P. EXALL - HIGHLY CONFIDENTIAL**

A. The reflects the fact that between the date of award of these stock -- these amounts of stock and the date at which these schedules were prepared, the stock price of Barclays underpinning the value of these awards had roughly doubled.

**Q. From when to when? From September --**

A. These stock awards were made in May 2009. And the schedule is done as you see it with all these -- it is an estimate of a liability that is due and payable at some future time. That liability may or may not be \$9 million. It could be different.

**Q. Okay. But at present you're estimating it at 9 million.**

A. That's correct.

**Q. And that's assuming or it's based on an increase in the value of the Barclays stock which is the item that you multiple by 1.79.**

A. My calculation would be the \$258 million multiplied by 1.79 percent times 2, the 2 factor representing the growth of the

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**to be awarded over two years?**

A. I do.

**Q. Is that this 50 -- part of this \$53 million you're talking about?**

A. No.

**Q. Okay. So I don't see any other entries here that could be that. You're saying that he's not one of the recipients of the [REDACTED] that you're talking about here?**

A. No, he is not.

**Q. Okay. And who is getting that money?**

MR. GREEN: You can go ahead and answer.

A. A gentleman by the name of Mr. Jonathan Hoffman.

**Q. And who is he?**

A. He is a principal trader in the global markets business at Barclays Capital.

**Q. And why is he getting this money?**

A. The amount was owed -- was due and payable to him by Lehman Brothers under his contract with Lehman Brothers pre-acquisition.



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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Barclays assumed that liability as part of the  
3 acquisition process and embodied these amounts  
4 of that compensation amongst others in that  
5 contract and those amounts are due and payable  
6 to him over time as specified in that  
7 contract.

8 Q. Okay. Now, this is all -- the  
9 entire [REDACTED] goes to this one individual?

10 A. That is correct.

11 Q. Over a three-year period?

12 A. He receives two tranches of [REDACTED]  
13 [REDACTED] in February '10 and February '11. And  
14 the additional [REDACTED] will effectively be  
15 delivered in February of 2010.

16 Q. Okay. When I -- just for  
17 clarification when it says February '10 that  
18 means February 2010?

19 A. That's correct.

20 Q. And February '11 means February  
21 2011?

22 A. That is correct.

23 Q. And maybe you explained this but  
24 is this -- what is this to reflect as far as  
25 his performance at Lehman?

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2 A. He was owed -- under his contract  
3 with Lehman Brothers, that was the amount due  
4 and payable to him -- well, that is not the  
5 entire amount. But that is the amount  
6 included on this spreadsheet. Well, the  
7 entire amount is included on this spreadsheet.  
8 There's another element sitting in bonus  
9 including social taxes. The [REDACTED]  
10 represents the amount outside of the bonus  
11 including social taxes amount and is in  
12 respect -- the entire amount is in respect of  
13 the contract that he had at Lehman Brothers  
14 which guaranteed him a payout on his trading  
15 performance. And the amount relates to the  
16 trading performance he did, for want of a  
17 better word, pre-acquisition.

18 Q. Okay. So this is a con -- he had  
19 a contract with Lehman that provided him X  
20 amount of compensation based on his trading  
21 performance and this number is the amount due  
22 and payable to him up to September 22nd, 2008  
23 under that contract?

24 MR. GREEN: Object to the form of  
25 the question.

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2 A. That's correct.

3 MR. GREEN: Well, could we go off  
4 the record for one second? Because I  
5 think the record is unclear. Or I can  
6 add a clarification.

7 MR. HINE: You want to add a  
8 clarification?

9 MR. GREEN: But I don't want to  
10 testify.

11 MR. HINE: No, no. You can take a  
12 break.

13 MR. GREEN: Take a short break.  
14 (Recess taken.)

15 MR. HINE: Let's go back on the  
16 record.

17 A. A clarification of the previous  
18 question perhaps is relevant. The amounts --  
19 the amounts payable to Mr. Hoffman were  
20 amounts that were due and payable to him under  
21 the contract with Lehman Brothers. And the  
22 clarification is they had not as yet at that  
23 time been paid to him at all. They were just  
24 due and payable to him. He hadn't received  
25 any of that compensation.

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2 Q. So Barclays undertook that  
3 obligation to pay him what he was owed by  
4 Lehman.

5 A. That is correct.

6 Q. Okay. But in your note here it  
7 says bonus relating to performance for one  
8 January to 22 September '08.

9 Do you see that?

10 A. I do.

11 Q. Then it says but with future time  
12 served criteria and a portion linked to future  
13 production.

14 What does that mean?

15 A. I can't -- I'll give you my  
16 general interpretation of the terms. The  
17 specific legal interpretation of the  
18 forfeiture clauses I can't really speak to all  
19 that.

20 Q. Sure.

21 A. The intention was to deliver two  
22 payments or two tranches of [REDACTED] in  
23 each of February 2010 and February 2011.  
24 Those payments could be reduced -- each  
25 payment could be reduced by up to [REDACTED]

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 should Mr. Hoffman had made losses in his  
3 trading for Barclays Capital post-acquisition.

4 So for all intents and purposes we  
5 promised Mr. Hoffman to pay him [REDACTED]  
6 [REDACTED] of that [REDACTED] -- of each of the [REDACTED]  
7 could be re -- that [REDACTED] could be  
8 reduced by up to [REDACTED] should he have  
9 made losses for Barclays Capital in the  
10 performance period subsequent to the  
11 acquisition.

12 Q. So part of the [REDACTED] is based on his  
13 performance at Barclays, right?

14 MR. GREEN: Object to the form.

15 A. No. The entire fee is based on  
16 his pre-acquisition performance. The delivery  
17 of the residual [REDACTED] is to an extent relative to  
18 his trading performance at Barclays.

19 Q. All right. So am I correct to  
20 say -- and how much is at issue with respect  
21 to his performance at Barclays? I thought you  
22 said [REDACTED] --

23 A. [REDACTED] of each of the [REDACTED] --  
24 again, you would need a lawyer to interpret  
25 the contract.

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2 A. The two agreements are distinct  
3 and separate. They're two individual  
4 contracts that stand alone.

5 Q. Okay. But Barclays assumes a  
6 [REDACTED] obligation based on his work prior  
7 to the acquisition, right?

8 A. That's correct.

9 Q. But Barclays' willingness to pay  
10 that is contingent on at least in substantial  
11 part on how well he performs for Barclays  
12 thereafter, correct?

13 A. That is correct. As well as Mr.  
14 Hoffman being in employment with Barclays at  
15 the time.

16 Q. Okay. So he has to stay an  
17 employee at Barclays at least through the  
18 third payment.

19 A. I don't know that for certain.  
20 Again, I can't interpret the specific leaving  
21 clauses or termination clauses under his  
22 agreement. But in general that's -- you know,  
23 I would say it's based on future time served  
24 criteria as well trading performance.

25 Q. Okay. And so is there an

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2 Q. Sure. Sure.

3 A. I'm giving you a general  
4 intention, and my interpretation personal and  
5 it may or may not -- somebody may or may not  
6 agree with that or not. Ten of the 20 -- of  
7 each [REDACTED] was subject to forfeiture depending on  
8 the extent of Mr. Hoffman's loss -- trading  
9 loss for Barclay in each of those years. And  
10 the [REDACTED] is also subject to him having  
11 made money for Barclays subsequent to his --

12 Q. So am I correct to say that the [REDACTED]  
13 [REDACTED] is based on his pre-acquisition  
14 performance at Lehman but Barclays'  
15 willingness to assume that liability is in  
16 part based on how well he performs at  
17 Barclays?

18 MR. GREEN: Object to the extent  
19 it calls for a legal conclusion.

20 A. Barclays assumed the entire  
21 liability and has structured some terms and  
22 conditions around the delivery of that  
23 liability.

24 Q. Well, but that's a modification to  
25 the agreement he had at Lehman, right?

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 individual agreement with this Mr. Hoffman?

3 A. Yes, there is.

4 Q. Okay. And -- okay. Is there  
5 anything else in this entry of [REDACTED]  
6 other than the Mr. Hoffman deal?

7 A. Nope.

8 Q. Okay. I had a follow-up question  
9 on the -- you had previously talked about the  
10 social tax and the payroll tax in certain of  
11 these entries. Do you remember that?

12 A. Yes.

13 Q. And I didn't understand whether  
14 you're talking about -- when you have an entry  
15 for one of those taxes, are you talking about  
16 the withholding obligation of Barclays or  
17 Barclays' own obligation to pay those  
18 authorities?

19 I don't know if that's a clear  
20 question but --

21 A. No, it's not.

22 MR. GREEN: Object to the form.

23 Q. Barclays has an obligation to  
24 withhold personal income tax as to certain  
25 individuals, right?

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A. Yes.

**Q. So when you have an entry in here on payroll tax, for example, is that -- where it says payroll tax on equity compensation, do you remember that discussion?**

A. Yes.

**Q. Is that just a withholding tax or is it an obligation of Barclays to pay the tax authorities?**

MR. GREEN: Object to the form.

A. I actually don't know the answer to that. It is a tax that's due and payable to the regulatory authorities. As to whom that liability relates, I don't know.

**Q. Okay. And would that be the same answer with respect to the social tax up in the bonus entry?**

A. Yes.

**Q. Okay.**

A. What I can say is that the withholding taxes that you referred to that are -- these are the gross amounts payable to those individuals in terms of -- so if I refer again back to Mr. Lowitt's contract, we've got

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to pay him a cash advance of [REDACTED]. That's a gross amount payable to him. He in his individual capacity has to pay income tax which we will withhold in entirety. The entire [REDACTED] is embodied in the [REDACTED] cash component effectively.

**Q. Okay. And I don't think I asked you this but if we go to that bonus entry with social tax, do you see that?**

A. Yes.

**Q. The 1.529 billion. Could you give me a percentage -- how much of that is the social tax portion and how much is the actual bonus paid to that individual?**

MR. GREEN: Object to form.

**Q. Gross bonus paid to that individual.**

A. I don't have the exact amount but I would categorize it as not significant.

**Q. Can you ball park percentages?**

A. Crickey.

If I had to guess I'd say maybe \$50 million.

**Q. \$50 million? Okay. And --**

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A. And the reason I say that -- and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll.

**Q. Sure.**

A. But one of the -- the only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's -- I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily.

I do not believe that that -- if I was to look at that line and if you -- I would categorize the social tax item as being not significantly material.

**Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses?**

A. Yes.

**Q. Okay. How about the payroll tax on equity compensation?**

A. What's your question?

**Q. That's a separate entry so I don't**

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**P. EXALL - HIGHLY CONFIDENTIAL**  
**need to ask that question. I apologize. I misunderstood that.**

A. Okay.

**Q. Okay. The payroll tax on acquisition buyout, what is that?**

A. The [REDACTED] reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of [REDACTED] shown directly above it on the schedule.

**Q. So that relates only to Mr. Hoffman's deal with Barclays?**

A. That's my understanding.

**Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority?**

A. That's my understanding.

**Q. Can we skip down to ISP awards. Could you explain to me what that is?**

A. The acronym?

**Q. Yes.**

A. The ISP stands for incentive share plan. It is a stock award program -- it's the

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 name of the stock award program we have in  
3 place at Barclays and which we will utilize to  
4 make these relevant awards.

5 Q. Is this a plan that was in place  
6 at Lehman prior to the acquisition?

7 A. This plan was not in place at  
8 Lehman, no. They had similar stock award  
9 programs under their own compensation schemes.

10 Q. Okay. And so what is this  
11 [REDACTED] being paid for?

12 A. Okay. So these -- the [REDACTED]  
13 directly relates to the \$258,000,000 further  
14 up in the Equity column under Bonus Including  
15 Social Taxes.

16 The sequence of events was as  
17 follows. Under normal Barclays policy stock  
18 awards are made in March of every year. So  
19 under the normal practice Barclays would have  
20 made stock awards to individuals in March of  
21 2009 in respect of their 2008 annual bonuses.

22 Q. Okay.

23 A. The stock awards for various  
24 reasons were made in May 2009. The value of  
25 the awards -- well, because of the unforeseen

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 and unanticipated delay in making the awards  
3 to individuals, during that period the stock  
4 price at Barclays appreciated substantially  
5 and in effect individuals received an amount  
6 of stock units of less than what they would  
7 have received had the awards been made under  
8 the normal process in March 2009 because of  
9 the increase in the stock price.

10 The [REDACTED] reflects  
11 additional shares awarded to those -- to  
12 former Lehman Brothers employees and the  
13 awards were not exclusive to former Lehman  
14 Brothers employees. This just reflects the  
15 component related to former Lehman Brothers  
16 employees to compensate them for that loss of  
17 value that they had suffered as a result of  
18 the normal process not having been followed in  
19 that particular year.

20 Q. So just so I understand why --  
21 what caused the delay in the award of the  
22 bonus -- of the stock bonuses?

23 A. I can't speak for the specific  
24 reason why. I know there was a delay.

25 Q. Was it related to the

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Barclays/Lehman acquisition?

3 A. No. Not to my knowledge.

4 Q. Okay. So this -- if I understand  
5 you correctly, this [REDACTED] only relates  
6 to stock awards granted to former Lehman  
7 employees, right?

8 A. This [REDACTED] dollars, yes.

9 Q. All right. And it's to compensate  
10 them for the delay in awarding that award from  
11 March until May.

12 A. That's correct.

13 Q. But aren't the Lehman Brothers  
14 employees granted their award back in  
15 September?

16 A. They were given a value, a dollar  
17 value of award. When it comes to granting an  
18 amount of stock units they get an amount of  
19 stock units based on the prevailing share  
20 price at the time of the award grant.

21 So they would have received --  
22 I'll give you a hypothetical example. An  
23 individual would have had \$100 worth of stock  
24 of value that was to be delivered to him in  
25 March of 2009. Assume the stock price in

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 March 2009 was a dollar. He would have got a  
3 hundred shares. Those awards were never made  
4 in March. What happened was they were made in  
5 May. In May let's assume for argument's sake  
6 the stock was \$2. He would only have got 50  
7 shares. He got -- and he's lost the stock  
8 price appreciation he would have got on the  
9 hundred shares had he been awarded them three  
10 months prior.

11 The [REDACTED] is to compensate  
12 him for that loss of value in the respect of  
13 the fewer amounts of shares that he ultimately  
14 received.

15 Q. Okay. So it's actually the --  
16 it's the value of the appreciation of the  
17 stock he would have received from March to  
18 May.

19 A. It's not the entire value. It's  
20 to compensate him for that loss of value. I  
21 don't believe that the entire value is  
22 reflected in this number. It was to  
23 compensate him for an extent of that, yes.

24 Q. Well, here's my question. If he's  
25 granted in September \$100 worth of stock bonus

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **he would have gotten a hundred shares in**  
3 **March -- or he would have gotten a hundred**  
4 **shares in March if the price was a dollar**  
5 **using your hypothetical, right? He would also**  
6 **have gotten his hundred shares in May if he**  
7 **gets 50 shares at \$2. Why --**  
8 **MR. GREEN: Object to the form.**  
9 **Q. Well, I'm trying to use your**  
10 **hypothetical.**  
11 **A. My hypothetical is that he would**  
12 **not have got the hundred shares in May. He**  
13 **would have only got 50 shares in May.**  
14 **Q. But it would be worth \$2 at that**  
15 **time.**  
16 **A. That's correct. The value would**  
17 **have been the same. But he has lost that.**  
18 **Rewind to March. If he had been awarded the**  
19 **shares in March he would have a hundred shares**  
20 **worth a dollar. Those shares by May would**  
21 **have been worth 200 at the stock price of 2.**  
22 **Q. Okay.**  
23 **A. You're giving him only a hundred**  
24 **of value in May.**  
25 **Q. Okay.**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **that to be true.**  
3 **Q. But it's not a former Lehman**  
4 **employees policy only.**  
5 **A. Not only, no.**  
6 **Q. Okay. So then why is this**  
7 **award -- how is this award related to the work**  
8 **they performed at Lehman? Because, I mean,**  
9 **basically it's compensating them for a delay**  
10 **in a stock payment while at Barclays.**  
11 **MR. GREEN: Object to the form.**  
12 **A. The amount of the award is derived**  
13 **directly from the equity awards that would**  
14 **have been made under the normal course of**  
15 **business. And insofar as they are related to**  
16 **pre-acquisition service on behalf of Lehman**  
17 **Brothers, these -- the value of these awards,**  
18 **the economic cost of these awards relate to**  
19 **that pre-acquisition service. It relates to**  
20 **the delivery of the stock component of**  
21 **compensation in many cases embodied in**  
22 **contracts such as Mr. Lowitt's here. Had they**  
23 **been awarded in the normal course of business**  
24 **in March of 2009.**  
25 **Q. Okay. But --**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **A. That's the difference.**  
3 **Q. I see. So this is done not only**  
4 **for the former Lehman employees. It's also**  
5 **done for all the other Barclays employees who**  
6 **suffered this same type of loss, right?**  
7 **A. They were granted for the**  
8 **majority -- for other Barclays Capital**  
9 **employees that received stock awards at the**  
10 **time for the most part, yes.**  
11 **Q. So this is not --**  
12 **A. This is a subset of a wider**  
13 **population.**  
14 **Q. This program, this ISP award was**  
15 **not granted to former Lehman employees. It**  
16 **was granted Barclays wide to those who**  
17 **qualified, right?**  
18 **A. To my knowledge, it was not**  
19 **granted Barclays wide. It was Barclays**  
20 **Capital wide.**  
21 **Q. Okay.**  
22 **A. I don't -- I can't testify as to**  
23 **if it was that specific, but there were more**  
24 **individuals concerned than this. I cannot say**  
25 **it was a Barclays wide policy. I don't know**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **A. They all relate to the awards**  
3 **embodied -- well, if I take Mr. Lowitt as an**  
4 **example, any additional shares he would have**  
5 **been awarded under that program relate to the**  
6 **2008 EPP recommendations that embodied in his**  
7 **contract and the value thereof.**  
8 **Q. I understand how they relate to**  
9 **it. But the award -- isn't it true that the**  
10 **award itself of the ISP is to compensate them**  
11 **for mistakes or whatever problems occurred at**  
12 **Barclays that caused this delay from March to**  
13 **May, right?**  
14 **MR. GREEN: Object to the form.**  
15 **A. I can say that the [REDACTED] has**  
16 **nothing to do with post-acquisition service of**  
17 **Barclays PLC. It has everything to do with**  
18 **the services that they provided**  
19 **pre-acquisition to Lehman Brothers.**  
20 **Q. I'm not sure you've answered my**  
21 **question. I understand that the 258 million**  
22 **comes from their pre-acquisition services.**  
23 **But this additional [REDACTED], isn't it the**  
24 **case, is paid to them because of some mistakes**  
25 **or whatever happened at Barclays that caused**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **this delay in awarding the bonus, right?**

3 MR. GREEN: Object to the form.

4 A. It directly relates to the \$258  
5 million insofar as the [REDACTED] is derived  
6 specifically from the \$258 million reflected  
7 on the schedule.

8 **Q. All right. I understand how it's**  
9 **derived from the 258 million and I understand**  
10 **how the 258 million is derived from their**  
11 **pre-acquisition work. But the [REDACTED] is**  
12 **not compensation for pre-acquisition work.**

13 MR. GREEN: Asked and answered.  
14 Bill, I think you've asked this question  
15 three times and he's given you his  
16 answer.

17 MR. HINE: Well, I'm getting what  
18 seems to be an evasive answer.

19 MR. GREEN: No. He's given you an  
20 answer and it's an entirely appropriate  
21 answer and there's no reason to ask it  
22 until you get the answer you want.

23 MR. HINE: All right. I just want  
24 an answer to the last one I asked.

25 MR. GREEN: Could you repeat the

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **question?**

3 (Record read.)

4 **Q. Is that right?**

5 A. No. In my personal opinion it is  
6 not. The [REDACTED] would have been  
7 valued -- would have accrued to these  
8 individuals had they received their stock  
9 awards under the normal course of business.  
10 It was directly compensation related to  
11 pre-acquisition services in relation to Lehman  
12 Brothers as derived from the shares that they  
13 would have got had the normal course of  
14 business been followed.

15 **Q. Okay. Now, the payroll tax on**  
16 **those awards, what is that?**

17 A. The calculation of those again is  
18 an accounting -- is an estimate similar to the  
19 one reflected previously on the schedule  
20 entitled Payroll Tax on Equity Compensation.

21 **Q. So same method of estimating only**  
22 **now you're estimating it based on [REDACTED]?**

23 A. That's correct.

24 **Q. Okay. Back to the [REDACTED] for**  
25 **a second. It says here Additional shares**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **awarded at 25P. What does that P mean?**

3 A. Pence. English pence. English  
4 pounds.

5 **Q. So is that the equivalent of**  
6 **25 percent?**

7 A. Yes. 25 cents on the dollar.

8 **Q. Okay. So 25 cents on the dollar**  
9 **as measured against the value of a Barclays**  
10 **share from March to May?**

11 A. No. That's not correct. So if  
12 you related back to the 258 it's roughly a  
13 quarter.

14 **Q. Oh, I gotcha. 25 cents on the**  
15 **dollar as compared to the 258 million.**

16 A. That would be correct.

17 **Q. Okay. And 25 cents is not total**  
18 **compensation for the value increase in**  
19 **Barclays' share but it's a portion of the --**  
20 **it's based on the -- as a portion of the**  
21 **increase in Barclays' share price from March**  
22 **to May?**

23 MR. GREEN: Object to form.

24 A. I don't recall the loss of value  
25 or the notional loss of value. I don't recall

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **the exact amounts. I don't believe it's an**  
3 **exact lack-for-lack replacement. I can't**  
4 **speak to whether it was more or less but I**  
5 **believe it was less.**

6 **Q. Okay. Substantially less or**  
7 **just --**

8 A. I don't recall.

9 **Q. Okay. But if I wanted to find**  
10 **that out I would take the share price from**  
11 **Barclays in March and compare it to May?**

12 A. You would think so. That's not  
13 practically how things work. The stock awards  
14 at any point in time are generally based on an  
15 average stock price calculated over a number  
16 of days in which stock would have been  
17 purchased in the market to hedge the awards.

18 So there is a process underpinning  
19 it. There is some math -- there is  
20 mathematical calculations behind all this that  
21 had been produced. But you can't simply just  
22 take a spot price at a point in time.

23 **Q. I gotcha.**

24 **Now, if I look at the bottom line**  
25 **it says Total Spend. Do you see that?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. I do.  
3 **Q. That is -- that's not what**  
4 **Barclays has spent to date, correct? Because**  
5 **that includes future payment.**  
6 MR. GREEN: Object to the form.  
7 A. Not all those cash payments have  
8 been made, no.  
9 **Q. Okay. In other words, if I wanted**  
10 **to know the total amount that has been paid to**  
11 **date, I would look up to the \$1.543 billion**  
12 **number?**  
13 A. On this schedule that would be  
14 correct. I would suspect that on further  
15 reconciliation some of the 27 million  
16 reflected as severance under the payable in  
17 the future may well flip up into the previous  
18 category.  
19 **Q. Okay.**  
20 A. And obviously as time moves on  
21 other amounts will.  
22 **Q. Well, in the course of working on**  
23 **the compensation for these former Lehman**  
24 **employees were you aware that there's a**  
25 **provision in the APA that required them to be**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 But I can't answer for the specific wording of  
3 your question when you refer to paid. Can you  
4 rephrase that perhaps in some different way?  
5 **Q. Yeah, let's try this. You see the**  
6 **entry for bonuses, bonus including social tax?**  
7 A. Excuse me. Oh, sorry. On the  
8 schedule?  
9 **Q. On the spreadsheet.**  
10 A. Yes.  
11 **Q. Was that all paid or committed by**  
12 **March 19th, 2009?**  
13 A. The cash amounts -- certainly I  
14 would say the vast majority if not all, but  
15 there's always an exception. People sometimes  
16 don't want to be paid at a particular point in  
17 time. Those cash amounts would in the  
18 majority have been paid and discharged by that  
19 time.  
20 **Q. Okay.**  
21 A. The equity awards, again, I've  
22 explained to you the delay in the award of  
23 value -- the award of the amount of shares.  
24 But I believe that at the time of bonus there  
25 were compensation communications for employees

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **paid by March 15th of 2009?**  
3 MR. GREEN: Object to the form.  
4 A. I've seen the date March 15th,  
5 2009. I'm unsure as to what that obligates  
6 Barclays to do or what it doesn't obligate  
7 Barclays to do.  
8 **Q. Okay. So, in other words, the**  
9 **March 15th, 2009 date is not something you've**  
10 **been shooting to comply with in the course of**  
11 **compensating these employees?**  
12 MR. GREEN: Object to the form of  
13 the question. Are you speaking to him  
14 personally?  
15 MR. HINE: Well, he's not paying  
16 them. Barclays is paying them.  
17 MR. GREEN: Okay. So --  
18 **Q. Is the March 15th, 2009 date**  
19 **something that Barclays has taken into**  
20 **consideration when it's paid these employees**  
21 **these various forms of compensation?**  
22 MR. GREEN: Object to the form.  
23 You may answer if you know.  
24 A. I don't know specifically whether  
25 we've taken -- it's a date that we know of.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 they would have been aware of the value of  
3 that stock.  
4 **Q. Okay.**  
5 A. As opposed to the amount of units  
6 they would receive. But, again, I'm not  
7 specific on the date.  
8 **Q. And the delay you talked about was**  
9 **the one you previously mentioned from March to**  
10 **May?**  
11 A. That's correct. In terms of the  
12 equity awards, yes.  
13 **Q. Any other entries on this**  
14 **spreadsheet that were made before March 15th**  
15 **2008 -- 2009?**  
16 A. March 15th? Sorry? Could you  
17 say that again? Sorry. I missed the  
18 question.  
19 **Q. Were any other entries on this**  
20 **spreadsheet paid before March 15th, 2009?**  
21 MR. GREEN: Objection to form.  
22 You may answer if you know.  
23 A. Yes. There were entries on the  
24 spreadsheet prior to March 15th, 2009.  
25 **Q. Like what?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. An example would have been  
3 severance payments made to individuals  
4 terminated under the RIF, reduction in force  
5 program in Q4 2008 and Q1 2009 as one example.  
6 **Q. Okay. Any others?**  
7 A. There are likely to be some bonus  
8 advances that were made to particular  
9 individuals that are included in the 1,271  
10 number which is bonus to clean social taxes.  
11 They may well have been paid prior to the 15th  
12 of March 2009.  
13 **Q. Okay. Any others?**  
14 A. Off the -- obviously, the pre-22/9  
15 payroll items would have been discharged and  
16 paid prior to the 15th of March 2009.  
17 **Q. Why? When were they paid?**  
18 A. Well, as I've said to you 5  
19 million of the \$12 million relate to payrolls  
20 that had to be made in September of 2008.  
21 **Q. So they were paid in September**  
22 **2008.**  
23 A. That's my understanding.  
24 **Q. Okay. And the ex-pat regulatory**  
25 **sum of \$7 million, that was --**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 terminated did the bonus that he was supposed  
3 to get thrown back in and get distributed  
4 among the remaining transferred employees?  
5 A. I don't know. I mean, there were  
6 people that resigned.  
7 **Q. Yeah.**  
8 A. And they got nothing as they left.  
9 **Q. Okay. Let me give you a specific**  
10 **question then.**  
11 MR. HINE: Let's mark this.  
12 (Deposition Exhibit 282B, document  
13 bearing production numbers  
14 BCI-EX-00113161 through BCI-EX-00113163,  
15 marked for identification as of this  
16 date.)  
17 BY MR. HINE:  
18 **Q. Mr. Exall, I'm handing you a copy**  
19 **of an exhibit marked 282B which appears to be**  
20 **a form of employment contract offered to Mr.**  
21 **McDade dated December 18th, 2008. It has**  
22 **Bates stamps BCI-EX 00113161 through -63.**  
23 **My first question is have you ever**  
24 **seen this document before?**  
25 A. I may have seen it. I don't

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. I don't know exactly when that was  
3 paid.  
4 **Q. Okay. Could you turn to the APA**  
5 **again. Section 9.1(c).**  
6 A. (Witness complies.)  
7 **Q. And I know you're not a lawyer and**  
8 **I'm not trying to trip you up here but if you**  
9 **refer to the section where it says -- do you**  
10 **see the sentence about a third of the way down**  
11 **the paragraph that starts, "Any amounts that**  
12 **would have been allocated in respect of any**  
13 **transferred employee who voluntarily**  
14 **terminates employment before such award is**  
15 **made shall instead be allocated among the**  
16 **remaining transferred employees."**  
17 **Do you see that?**  
18 A. I do.  
19 **Q. Did that ever happen?**  
20 MR. GREEN: Objection to form.  
21 You can answer if you know.  
22 A. I don't know. Did what ever  
23 happen?  
24 **Q. Well, did someone who was supposed**  
25 **to get a bonus, for example, and voluntarily**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 recall.  
3 **Q. Do you know if Mr. McDade signed**  
4 **this employment contract with Barclays?**  
5 A. No, I don't.  
6 **Q. You don't know?**  
7 A. I don't know.  
8 **Q. Okay. Just as an aside, do you**  
9 **see the date is September 18th, 2008?**  
10 A. I do.  
11 **Q. Which is prior to the September**  
12 **22nd closing.**  
13 **Do you know how many Barclays**  
14 **employees were offered employment contracts**  
15 **before the closing?**  
16 A. Before the 22nd of September?  
17 **Q. Yeah.**  
18 A. No. I don't know.  
19 **Q. Do you know how I could find that**  
20 **out? Would Mr. Evans know that?**  
21 A. He wouldn't know off the top of  
22 his head. I guess it's a request you could  
23 make. And it could be found out. It's  
24 possible.  
25 **Q. Okay.**



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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 A. We could count contracts.</p> <p>3 Q. Do you know if there was any</p> <p>4 effort to offer employment terms to the --</p> <p>5 what I've seen called as the Elite 8 or the</p> <p>6 top eight people at Barclays prior to the</p> <p>7 closing?</p> <p>8 MR. GREEN: Object to the form of</p> <p>9 the question. When you say closing what</p> <p>10 date are you referring to?</p> <p>11 MR. HINE: I'm talking about</p> <p>12 September 22nd, 2008.</p> <p>13 A. Sorry. Could you repeat the</p> <p>14 question?</p> <p>15 Q. Are you aware of any efforts to</p> <p>16 offer employment or to discuss the terms of</p> <p>17 employment with former Lehman executives prior</p> <p>18 to September 22nd?</p> <p>19 A. I have no direct knowledge. I</p> <p>20 wasn't involved in any negotiations with any</p> <p>21 of these employees.</p> <p>22 Q. Okay. Have you heard anything</p> <p>23 about that?</p> <p>24 A. I don't recall.</p> <p>25 Q. Do you have any understanding</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 about former Lehman executives who signed</p> <p>3 employment contracts with Barclays prior to</p> <p>4 September 22nd, 2008?</p> <p>5 A. Do I have any what? Sorry.</p> <p>6 Q. Understanding.</p> <p>7 A. What does that mean?</p> <p>8 Q. Well, do you have any knowledge</p> <p>9 that, for example, Mr. Lowitt signed his</p> <p>10 contract before the closing?</p> <p>11 A. I've never examined the contracts</p> <p>12 in that respect, no.</p> <p>13 Q. Well, I didn't ask you if you</p> <p>14 examined the contracts. Do you have any</p> <p>15 understanding about whether any of the senior</p> <p>16 executives at Lehman were signed up by</p> <p>17 Barclays before the closing?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. Back to Mr. McDade's --</p> <p>20 A. Okay.</p> <p>21 Q. Whether he signed it or not I'm</p> <p>22 not really sure, but my question is you'll see</p> <p>23 in this document it refers to a cash bonus of</p> <p>24 2008, right? A 2008 EPP recommendation.</p> <p>25 Do you see that?</p>
Page 164	Page 165
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 A. I see that.</p> <p>3 Q. Do you see the special cash award?</p> <p>4 A. I do.</p> <p>5 Q. Now, did Mr. McDade -- Mr. McDade</p> <p>6 resigned, correct?</p> <p>7 A. I don't know how -- I don't know</p> <p>8 the circumstances around Mr. McDade's joining</p> <p>9 or not or leaving or not from Barclays.</p> <p>10 Q. You don't know whether he was</p> <p>11 terminated for cause or without cause.</p> <p>12 A. I have no knowledge of his</p> <p>13 arrangements, no.</p> <p>14 Q. Okay. Do you have any knowledge</p> <p>15 of any individual that was supposed to be</p> <p>16 offered awards like this who then left and my</p> <p>17 question is what happened to that award money?</p> <p>18 MR. GREEN: Object to the form.</p> <p>19 A. I don't understand the question.</p> <p>20 Q. Well, if you look back at 9.1(c)</p> <p>21 it purports to say -- it appears to say that</p> <p>22 their award money should go back into the pool</p> <p>23 and be shared among the all the transferred</p> <p>24 employees and my question is did that in fact</p> <p>25 ever happen?</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: Objection to form.</p> <p>3 Calls for a legal conclusion.</p> <p>4 A. I don't know what Section 9.1(c)</p> <p>5 obligates Barclays to do so I can't answer</p> <p>6 that question.</p> <p>7 Q. Okay. You don't know one way or</p> <p>8 the other?</p> <p>9 A. I don't have an opinion on that.</p> <p>10 Q. Okay. If you skip down further in</p> <p>11 that paragraph, 9.1(c), you'll see it starts</p> <p>12 with the word "however" and then from there to</p> <p>13 the end of the paragraph it talks about a</p> <p>14 circumstance where perhaps more than</p> <p>15 10 percent of the transferred employees</p> <p>16 voluntarily terminate.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Am I safe to assume that that did</p> <p>20 not happen in connection with the</p> <p>21 Barclays/Lehman transaction?</p> <p>22 MR. GREEN: I just want to caution</p> <p>23 the witness to read the exact language</p> <p>24 you're referring to.</p> <p>25 Q. It says, "However, the accrued '08</p>

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **FY liability shall be reduced if..."**  
3 MR. GREEN: All the way to the end  
4 of the paragraph?  
5 MR. HINE: Yes.  
6 MR. GREEN: Okay. Take your time  
7 to read that.  
8 **Q. Take your time to read that but my**  
9 **question is did that ever happen or are you**  
10 **aware of that clause ever being invoked or**  
11 **that many people ever left. So just take your**  
12 **time to read it.**  
13 MR. GREEN: Object to the form  
14 before he answers the question.  
15 (Document review.)  
16 A. I can't speak for the obligations  
17 that this places upon Barclays. I don't know  
18 what those are. I can't interpret it.  
19 Perhaps I can answer in a  
20 different way. I don't know what it means by  
21 voluntarily terminated. That would be my  
22 question. I don't know what exactly you're  
23 asking me to answer.  
24 **Q. Well, I understand you're not a**  
25 **lawyer and I'm not trying to ask for any legal**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 someone -- I've never personally heard someone  
3 say that the section of the clause would  
4 apply.  
5 **Q. Okay. And you don't have -- in**  
6 **your experience working in the compensation**  
7 **field you don't have an understanding of what**  
8 **voluntarily terminate means?**  
9 A. If you're asking for what I  
10 understand by voluntarily termination I can  
11 give you my view, my personal view, and that  
12 may be different than the interpretation of  
13 the APA or the position taken by Barclays.  
14 My view is that that refers to  
15 voluntary resignations by former Lehman  
16 Brothers employees that decided  
17 post-acquisition that they no longer wanted to  
18 be employed by Barclays Capital and hence  
19 resigned.  
20 **Q. Okay. And in your view did more**  
21 **than 10 percent of the transferred employees**  
22 **do that?**  
23 A. I would like to -- well, I don't  
24 know the exact number or the exact proportion.  
25 I would -- I'd leave it at that. I don't know

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **interpretation. Is it correct to say that in**  
3 **the course of your employment in your present**  
4 **position you haven't heard anyone say, Oh,**  
5 **more than 10 percent of the people left, we**  
6 **should reduce the bonus pool?**  
7 MR. GREEN: Object to form.  
8 **Q. Or words to that effect?**  
9 A. No one has said that to me, no.  
10 **Q. Okay. Did you understand that**  
11 **anyone was ever considering that?**  
12 A. My understanding is that this is a  
13 clause in the APA and people are aware of it  
14 and relevant people know what that means. It  
15 is a consideration. It has been considered.  
16 I do know that.  
17 **Q. But did more than 10 percent of**  
18 **the employees voluntarily terminate?**  
19 MR. GREEN: Object to form.  
20 A. I can't answer -- I can't give you  
21 a factual answer because I don't know the  
22 extent to which -- I don't know what you're  
23 defining as voluntary termination. Perhaps  
24 that means resignation. I don't know what  
25 this actually refers to. I've never heard

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 the exact number or exact proportion but --  
3 leave it at that.  
4 **Q. Is it your sense that more than**  
5 **10 percent have resigned?**  
6 MR. GREEN: Object. Calls for  
7 speculation.  
8 A. If you want me to speculate I  
9 will. I will speculate that not more than  
10 10 percent had voluntarily resigned under  
11 these -- post-acquisition.  
12 **Q. Okay. Fair enough. Thank you.**  
13 A. I mean there would be other points  
14 in time. That's not to say that in the future  
15 that if you aggregated it all up --  
16 **Q. Sure.**  
17 A. Right?  
18 **Q. But you're speaking as of today.**  
19 A. I'm speaking as of today. To the  
20 best of my knowledge, yes.  
21 MR. GREEN: Speculating as of  
22 today, I might add.  
23 A. Speculating as of today, that's  
24 correct.  
25 MR. GREEN: To the best of your --

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 A. To the best of my speculation.</p> <p>3 Q. Is it fair to say you don't have</p> <p>4 any personal knowledge or understanding about</p> <p>5 the circumstances of Mr. McDade leaving?</p> <p>6 A. No direct knowledge, no.</p> <p>7 Q. Do you have any indirect</p> <p>8 knowledge?</p> <p>9 A. I don't know how or under what</p> <p>10 circumstances he left, no.</p> <p>11 Q. Do you know how or under what</p> <p>12 circumstances he received any compensation</p> <p>13 from Barclays?</p> <p>14 A. I don't believe he received any</p> <p>15 compensation from Barclays. I don't know that</p> <p>16 for fact. But that is my general</p> <p>17 understanding.</p> <p>18 Q. Okay. Well let me introduce this</p> <p>19 as an exhibit and maybe it will prompt a</p> <p>20 further question.</p> <p>21 (Deposition Exhibit 283B, document</p> <p>22 bearing production number</p> <p>23 BCI-EX-00113194, marked for</p> <p>24 identification as of this date.)</p> <p>25</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. HINE:</p> <p>3 Q. Mr. Exall, I'm handing you a copy</p> <p>4 of a document marked as Exhibit 283B which</p> <p>5 appears to be a W-2 statement in connection</p> <p>6 with -- issued by Barclays to Mr. McDade and</p> <p>7 my only question is whether this provides any</p> <p>8 assistance to you in trying to figure out</p> <p>9 whether Barclays paid Mr. McDade anything.</p> <p>10 MR. GREEN: Object to the form of</p> <p>11 the question. The document speaks for</p> <p>12 itself.</p> <p>13 MR. HINE: Okay.</p> <p>14 MR. GREEN: Are you asking does it</p> <p>15 refresh his recollection?</p> <p>16 MR. HINE: Yes.</p> <p>17 A. I've never seen this document.</p> <p>18 Q. Do you know why Mr. McDade was</p> <p>19 paid anything if at all by Barclays?</p> <p>20 A. I have no idea. As I've said</p> <p>21 before, I have no knowledge of his</p> <p>22 arrangements.</p> <p>23 Q. Fair enough.</p> <p>24 (Deposition Exhibit 284B, document</p> <p>25 bearing production numbers</p>
Page 172	Page 173
<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 BCI-EX-(S)00027190 through</p> <p>3 BCI-EX-(S)00027197, marked for</p> <p>4 identification as of this date.)</p> <p>5 BY MR. HINE:</p> <p>6 Q. Mr. Exall, I've handed you a copy</p> <p>7 of a document marked as Exhibit 284B which is</p> <p>8 an e-mail dated September 23rd and the</p> <p>9 attachment thereto is Bates stamped</p> <p>10 BCI-EX-00027719 through -197. And my first</p> <p>11 question after you've had a chance to review</p> <p>12 it is have you ever seen this document before.</p> <p>13 A. Yes, I have this.</p> <p>14 Q. Could you explain to me what this</p> <p>15 is?</p> <p>16 A. As explained on the front page, an</p> <p>17 e-mail from Mr. Evans. It represents an</p> <p>18 update of our present bonus and related spend</p> <p>19 in respect of the commitments we have made to</p> <p>20 former Lehman employees as part of the</p> <p>21 acquisition.</p> <p>22 Q. All right. So I see several</p> <p>23 iterations of this. Is this a periodically</p> <p>24 prepared analysis?</p> <p>25 A. Yes. This was a set of</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 analysis -- or this was an analysis prepared</p> <p>3 daily for the purposes of the Executive</p> <p>4 Committee of Barclays Capital for a certain</p> <p>5 period following the acquisition.</p> <p>6 Q. Is it still prepared daily?</p> <p>7 A. No.</p> <p>8 Q. So this is -- immediately</p> <p>9 following the acquisition this is a daily</p> <p>10 summary?</p> <p>11 A. That's correct.</p> <p>12 Q. And how long did those summaries</p> <p>13 go? Do you know?</p> <p>14 A. I don't --</p> <p>15 MR. GREEN: Object to the form.</p> <p>16 A. I don't recall when we ceased</p> <p>17 producing them. I can't recall.</p> <p>18 Q. Who prepared these?</p> <p>19 A. I prepared the original one</p> <p>20 personally drawing on work done by several HR</p> <p>21 colleagues. Thereafter individuals in my team</p> <p>22 prepared the document and distributed it to</p> <p>23 Mr. Evans for distribution.</p> <p>24 Q. Okay. So do you have any way of</p> <p>25 knowing whether you prepared this particular</p>

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **one on September 23rd?**

3 A. I have no particular way of  
4 knowing, no.

5 **Q. Is it fair to say it was**  
6 **prepared --**

7 A. I will say I would have reviewed  
8 it. If I hadn't prepared it myself I would  
9 have reviewed it.

10 **Q. I gottcha.**

11 **And this was for what use?**

12 A. Again, it's as it states on the  
13 front e-mail, it's an update of our present  
14 bonus and related expense.

15 **Q. But I thought you said it was used**  
16 **to report to the Executive Compensation**  
17 **Committee; is that right?**

18 A. The Executive Committee of  
19 Barclays Capital. As you can see, the e-mail  
20 was sent or memo was sent to Mr. Diamond, del  
21 Missier -- Messrs. Diamond, del Missier,  
22 Jenkins and Ricci who formed the Executive  
23 Committee of Barclays Capital.

24 **Q. Okay. That's the commitment that**  
25 **oversees compensation issues for Barclays**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **Capital?**

3 MR. GREEN: Object to the form of  
4 the question.

5 A. It's the Executive Committee of  
6 Barclays Capital that has various  
7 responsibilities, compensation being one of  
8 them.

9 **Q. Oh, I misunderstood you. It's not**  
10 **a compensation committee. It's just the**  
11 **Executive Committee in general?**

12 A. It's the Executive Management  
13 Committee of Barclays Capital at that time.

14 **Q. Okay. And one of their things --**  
15 **one of their functions is to examine**  
16 **compensation issues?**

17 A. In the normal course of business,  
18 yes.

19 **Q. Does this report get passed up**  
20 **beyond them?**

21 A. I don't know.

22 **Q. Okay. Could you turn to the --**  
23 **page 2 of this document.**

24 A. Do you mean page 1?

25 **Q. Well, the first page of the**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **report.**

3 A. Okay.

4 **Q. Which is page 2 of the document.**

5 A. But the page referring to page 1  
6 of 7?

7 **Q. Right.**

8 MR. GREEN: And that would be the  
9 one with the Bates number ending 191?

10 MR. HINE: Correct.

11 **Q. Could you explain to me in general**  
12 **what this chart is supposed to encompass at**  
13 **the top?**

14 A. Which particular part of the chart  
15 would you like to examine?

16 **Q. Well, I see it broken out into**  
17 **entries entitled Elite 8 and then other GB**  
18 **proposals.**

19 **Do you see that?**

20 A. Yes.

21 **Q. What are those two entries**  
22 **supposed to mean?**

23 A. Okay. If we begin at the top with  
24 what is labeled Elite 8 the footnote describes  
25 what that is.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**

2 **Q. Right.**

3 A. And you used the term previously.  
4 It relates in actual fact to nine individuals  
5 at the time and they're listed there. And it  
6 relates -- the other GB proposals, GB being  
7 the acronym for guaranteed bonus. And that  
8 line there relates to the 393 other  
9 individuals that at that time we had offered a  
10 contractual guaranteed bonus similar to the  
11 one that you showed me earlier in the form of  
12 Mr. Lowitt's agreement.

13 **Q. Okay. So if I look at this I see**  
14 **402 people at this time were offered some kind**  
15 **of guaranteed bonus.**

16 A. That is correct.

17 **Q. And the Elite 8 had a separate**  
18 **compensation arrangement that distinguishes**  
19 **them from the 393.**

20 MR. GREEN: Object to the form of  
21 the question. I think that  
22 mischaracterizes the testimony. I don't  
23 think he testified to that.

24 **Q. Well, why do you break out the**  
25 **Elite 8 separately?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. They relate -- my understanding,  
3 and I was instructed to break them out -- my  
4 general understanding was that they were the  
5 nine senior individuals at Lehman Brothers  
6 that were the heads of the relevant businesses  
7 that we were interested in.  
8 **Q. And they received different forms**  
9 **of compensation than the rest of the people**  
10 **who were offered GB proposals?**  
11 A. No. They received compensation in  
12 the same form as other individuals.  
13 **Q. Just different amounts.**  
14 MR. GREEN: Object to the form of  
15 the question.  
16 A. Every individual received a  
17 different amount.  
18 **Q. All right. If you move to the**  
19 **right there's a block which has the title at**  
20 **the top that says Day 1 - 2008 Cost.**  
21 **Do you see that?**  
22 A. I do.  
23 **Q. Could you explain to me what the**  
24 **different columns signify in that chart within**  
25 **that block?**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 Capital was working to internally. And as you  
3 can see referenced in footnote 3, it is  
4 modeled as being the estimated pool  
5 requirement for 75 percent of 2007 total  
6 compensation for the original 175 to 200  
7 population plus the residual now in that  
8 bucket and that were guaranteed at 65 percent  
9 of the 2005 bonus.  
10 It's a modeled amount that we  
11 would have at the time, based on our internal  
12 reference points, have modeled to offer  
13 individuals under the guaranteed bonus  
14 contract and is instinct from what was  
15 actually offered.  
16 **Q. So is this model the result of**  
17 **negotiations between Lehman Brothers and**  
18 **Barclays or is it just a model that Barclays**  
19 **developed on its own based on certain**  
20 **assumptions?**  
21 MR. GREEN: Object to the form.  
22 A. I don't know.  
23 **Q. Okay. Well, for example, where**  
24 **did you come up with the notion that there**  
25 **would be 175 or 200 population? Is that just**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. The column entitled Actual would  
3 at this time have represented the actual  
4 dollar value of the guaranteed bonus embodied  
5 in these contracts that would have been  
6 offered to these 402 individuals.  
7 **Q. And when you say the guaranteed**  
8 **bonus, if we refer back to Mr. Lowitt that's**  
9 **the two entries we discussed earlier?**  
10 A. To be specific, that would be  
11 the -- and referring to Mr. Lowitt's contract  
12 they would be the 2008 guaranteed cash bonus  
13 plus the 2008 EPP recommendation.  
14 **Q. Okay. Does not include the**  
15 **special cash award?**  
16 A. If you're asking me are the  
17 special cash awards included in the \$862  
18 million title here.  
19 **Q. Yes.**  
20 A. The answer is no.  
21 **Q. Okay. Now, I see the original**  
22 **model. What does that signify?**  
23 A. The original model was an internal  
24 reference point or -- to give it a general  
25 characterization a rule of thumb that Barclays

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **an assumption, an internal Barclays**  
3 **assumption?**  
4 A. When I entered into this process  
5 for want of a better phrase that was my  
6 understanding or what I was told that the  
7 original population that Barclays intended to  
8 issue guaranteed bonus contract to was 175 to  
9 200 people.  
10 **Q. Okay. And why was that changed?**  
11 MR. GREEN: Object to the form.  
12 A. I don't know.  
13 **Q. Was this model developed prior to**  
14 **the APA?**  
15 A. I don't know.  
16 **Q. Do you know when you -- you're the**  
17 **one that did the first one of these; is that**  
18 **right?**  
19 A. That's right.  
20 MR. GREEN: I'm sorry. When you  
21 say model are you referring to --  
22 MR. HINE: Well, let me rephrase  
23 it.  
24 **Q. You prepared the first one of**  
25 **these summary reports, right?**

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A. I did.

**Q. And that was dated when?**

A. I don't recall the exact date. I would hazard a guess it was on -- I don't believe this was the first one.

**Q. Right.**

A. I think there might have been one dated the 22nd but I can't be sure.

**Q. Do you think there were any dated prior to the 22nd?**

A. It's possible. As I said, I produced one the first working day that I arrived in New York as part of the, you know, post-acquisition work. And I don't recall that exact date but I would have been the first person to produce this spreadsheet. Or this document.

**Q. Okay. And were you the first person to produce what you called the original model?**

A. No.

**Q. Who did that?**

A. I don't recall.

**Q. Was that produced in the week of**

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**the 15th to the 22nd?**

A. I don't recall when it was produced.

**Q. Could it possibly have been produced prior to September 15th?**

A. I don't know.

**Q. Okay. And then the next column in that block is entitled Overspend. Could you just explain to me what that means?**

A. That is simply the mathematical subtraction between the totals in the actual column and the original column. The numbers in the original model column.

**Q. I see. Okay. And why were you looking at that?**

A. Again, the original model was a reference point. And all this simply represents is the difference between what we had, in fact, offered people as part of their -- these guaranteed bonus contracts and what we originally modeled them to be.

**Q. Okay. And I see to the right of that a block entitled One-Time Deferred Cash Awards.**

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**Do you see that?**

A. I do.

**Q. What is that supposed to encompass?**

A. The entire block. And by way of example, I'll refer back to Mr. Lowitt's contract.

**Q. Sure.**

A. These amounts here refer to the offers and relevant contracts in respect of the special cash award as mentioned in Mr. Lowitt's contract.

**Q. Okay. So am I correct to say that that block in your report summarizes the -- all the special cash awards that were offered to special Barclays personnel payable over a three-year period?**

MR. GREEN: Object to the form.

A. Well, when you say special Barclays -- I don't -- sorry.

**Q. I misspoke. You referred to the special cash award in Mr. Lowitt's contract, right?**

A. Yes.

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**Q. So how does that relate to the block where you have here with the title One-Time Deferred Cash Award?**

A. The [REDACTED] referred to in Mr. Lowitt's contract under special cash award would be embodied in the other GB proposals line in the total of [REDACTED] under the block entitled the One-Time Deferred Cash Award. The split of 2008, '9 and '10 is purely the pro rata split of the total over those periods of time based on time served really. That was to assist finance in their accounting work.

**Q. But if Mr. Lowitt's is one of the Elite 8 wouldn't he be in the line above?**

A. I'm sorry. Yes.

**Q. So just so I understand, you took Mr. Lowitt's [REDACTED] which he has payable on two different dates and you put them in two different columns. You put half of those amounts in those two columns?**

A. No. Let me say it another way. The full [REDACTED] is shown in the [REDACTED] total, okay?

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2 Q. Where do you see ■--

3 A. The special cash award in Mr.  
4 Lowitt's contract --

5 Q. Yes. I got it.

6 A. That is in the ■■■■■ total.

7 Q. Right.

8 A. The amounts -- those amounts have  
9 been split up into three financial reporting  
10 years.

11 Q. Okay.

12 A. These do not reflect the dates of  
13 payment that the individual would receive  
14 them. It reflects the accounting treatment.

15 Q. I see.

16 A. Of those cash -- special cash  
17 awards and how they would be accounted for  
18 over these three financial years.

19 Q. And how do you get that  
20 information? Is that from the finance  
21 department?

22 A. The accounting treatment, yes,  
23 from the finance department. And it's a  
24 mechanical calculation based on the accounting  
25 policy and the length of time under which the

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1 P. EXALL - HIGHLY CONFIDENTIAL

2 special cash award's there.

3 Q. Okay. And then that last column  
4 is entitled Second Year GB. What is that?

5 A. That is effectively -- and there  
6 is no example in Mr. Lowitt's contract. That  
7 is any second year guaranteed bonus that was  
8 offered to an individual. So, for example,  
9 had Mr. Lowitt had a clause in his contract  
10 embodying or describing a 2009 guaranteed cash  
11 bonus of 2009 EPP recommendation, that would  
12 have been included in that column.

13 Q. Okay. And is Mr. Hoffman's ■■■■■  
14 in this chart?

15 A. No, it would not be.

16 Q. Why is that?

17 A. The structure of ■■■■■ is  
18 not -- actually, let me say this another way.

19 At the time, I don't recall Mr.  
20 Hoffman's contract having been concluded at  
21 this time. So I can't speak for what exact  
22 numbers Mr. Hoffman represents in these.

23 Q. Okay.

24 A. If you were to say if I was to  
25 reproduce the schedule again would Mr.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Hoffman's numbers be in there?

3 Q. Yes.

4 A. No. The structure of his  
5 compensation arrangements are such that they  
6 are not what we would term as a second year  
7 guaranteed bonus. They are described as  
8 something different as mentioned in the  
9 schedule earlier.

10 Q. Okay. When was Mr. Hoffman's  
11 contract concluded?

12 A. I don't recall.

13 RQ MR. HINE: Chris, I think we're  
14 going to want a copy of Mr. Hoffman's  
15 contract when you get a chance.

16 MR. GREEN: All right. We'll take  
17 that under advisement.

18 Q. If we continue now on your chart  
19 to the lower entries, I see under number of  
20 people, 10,111 non-guaranteed population.  
21 What does that mean?

22 A. That is the residual population  
23 that at this point in time had not been  
24 offered a guaranteed bonus. And when I say  
25 residual population I mean individuals that

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2 were former Lehman Brothers employees that at  
3 this point in time we consider to be Barclays  
4 employees.

5 Q. Okay. So they've come over to  
6 Barclays but they just haven't been provided a  
7 guaranteed bonus.

8 A. They would not have received a  
9 contract such as Mr. Lowitt's.

10 Q. Okay. And is this just a snapshot  
11 so that changes over time.

12 A. That's correct.

13 Q. Then the next one says 3,300  
14 planned redundancies. Do you know what that  
15 is?

16 A. Yeah. As it states there, it's an  
17 estimated plan of redundancy. It's an  
18 estimated, still moving, and it's net of an  
19 expected 3,300 bonuses, expected cost of about  
20 \$100 million.

21 Those were at the time  
22 hypothetical or estimates of population -- of  
23 the former Lehman Brothers population that may  
24 be subject to a reduction in force  
25 arrangement.

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2 Q. So these are the folks who if --  
3 based on the planning would get severance  
4 payments later.

5 A. They would be eligible for  
6 severance payments, correct.

7 Q. And now why in footnote 1 does it  
8 say Not funded out of 2008 bonus pool?

9 A. Well, my answer to that is they  
10 wouldn't receive a bonus. They would just  
11 receive a severance.

12 Q. Okay. So that's separate from the  
13 bonus pool.

14 A. Yes.

15 Q. The next entry says 8,798 --

16 A. 6,798?

17 Q. Oh, I'm sorry. My eyesight is  
18 getting worse than it was. 6,798 folks in  
19 what's called residual pool available for  
20 non-GB people. Could you explain that?

21 A. The 6,798 relates to a notional  
22 number of individuals after the estimated  
23 redundancy or reduction in force program that  
24 would be -- at this point in time that would  
25 not have received a contract such as Mr.

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2 Lowitt's. A guaranteed bonus contract.

3 Q. So it's reducing the  
4 10,000-some-odd people by a planned reduction  
5 in force to get to a smaller population of  
6 people?

7 MR. GREEN: Object to the form of  
8 the question.

9 A. That is correct.

10 Q. And what's the 538 on the  
11 right-hand side of the column?

12 A. That is a number that, with the  
13 sum of guaranteed bonuses above it, based on  
14 the 62 million totals 1.84 billion.

15 Q. Okay. And why are you -- well,  
16 let's go to the next item. Total Pool Funding  
17 Available 1.4 billion. Where did that number  
18 come from?

19 A. I was instructed to utilize that  
20 number in the spreadsheet.

21 Q. Why?

22 A. I don't know why.

23 Q. Do you have any understanding of  
24 how that number relates to the \$2 billion on  
25 the Exhibit 19 that we talked about earlier?

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2 A. No.

3 Q. Is there any connection between  
4 the two?

5 A. I don't know.

6 Q. You were never told of any  
7 connection?

8 A. Not to my recollection.

9 Q. Were you explained why you should  
10 use 1.4 billion?

11 MR. GREEN: Objection. Asked and  
12 answered.

13 Q. In this chart.

14 A. I don't recall.

15 Q. Who told you to use 1.4 billion?

16 A. Mr. Evans.

17 Q. Evans?

18 A. That's right, yeah.

19 Q. Now, for that -- going over to the  
20 left-hand column in that row it says 7,200.  
21 What is that? Is that the 402 plus 6,798?

22 A. Correct.

23 Q. Did you have any discussions with  
24 Executive Committee about these charts after  
25 you provided it to them?

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2 A. I don't recall any  
3 conversations -- direct conversation with  
4 them, no.

5 Q. Did they ever give you any  
6 feedback and say, you know, we need to model  
7 this or there's something missing?

8 A. The feedback I received was from  
9 Mr. Evans.

10 Q. What type of feedback was that?

11 A. I don't recall the exact feedback  
12 but it would have been along the lines of  
13 things -- as you may see, this report had  
14 evolved over time and included other items I  
15 think that would have been based on feedback  
16 that Mr. Evans had received or ideas he may  
17 have had that he may have wished to  
18 communicate to the Executive Committee.

19 Q. Do you have any specific  
20 recollections of feedback that he gave you?

21 A. Without seeing the evolution of  
22 this I don't really recall anything specific.

23 Q. Okay. Well, we'll get to some  
24 other versions in a little bit. Do you recall  
25 anything relating to PIM employees?



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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 A. Yeah. The private investment</p> <p>3 management business from Lehman Brothers, yes.</p> <p>4 <b>Q. What do you recall about that</b></p> <p>5 <b>issue?</b></p> <p>6 MR. GREEN: Object to the form.</p> <p>7 Do you mean in connection with this</p> <p>8 chart?</p> <p>9 MR. HINE: Yes.</p> <p>10 A. What specific issue?</p> <p>11 <b>Q. Well, I see in various iterations</b></p> <p>12 <b>of the chart there's modifications made and we</b></p> <p>13 <b>can go through them if you want but relating</b></p> <p>14 <b>to PIM employees. So I was wondering what</b></p> <p>15 <b>your recollection is of any issues that arose</b></p> <p>16 <b>relating to PIM employees.</b></p> <p>17 MR. GREEN: Maybe you show you</p> <p>18 show him --</p> <p>19 A. If you could give an example that</p> <p>20 would be helpful.</p> <p>21 <b>Q. All right. We'll get there later.</b></p> <p>22 <b>I just wanted to ask a general recollection.</b></p> <p>23 <b>Do you have any understanding of compensation</b></p> <p>24 <b>related issues arising in connection with PIM</b></p> <p>25 <b>employees that were coming from Lehman</b></p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Brothers to Barclays?</b></p> <p>3 A. I will give you a practical</p> <p>4 example. If I refer back to the schedule,</p> <p>5 281B, the line item entitled Replacement RCU</p> <p>6 of \$11 million, the majority of that related</p> <p>7 to PIM employees. That's one example.</p> <p>8 <b>Q. Okay.</b></p> <p>9 A. Actually -- let's see. In fact,</p> <p>10 it's described on page 4 of 7.</p> <p>11 MR. GREEN: Sorry. What page?</p> <p>12 THE WITNESS: Page 4 of 7.</p> <p>13 MR. GREEN: It's the page of the</p> <p>14 Exhibit 284B Bates labeled ending 194?</p> <p>15 THE WITNESS: That's correct.</p> <p>16 <b>Q. Okay. So that's the RSU -- RSUs</b></p> <p>17 <b>that you're referring to in Exhibit 281B,</b></p> <p>18 <b>correct?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And how come it says here</b></p> <p>21 <b>currently these RSU awards have no value?</b></p> <p>22 MR. GREEN: Object to the form.</p> <p>23 <b>Q. Do you see on page 4 of 7 of your</b></p> <p>24 <b>summary?</b></p> <p>25 A. I think if I refer back to the</p>
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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 explanation I gave in respect of the line item</p> <p>3 in 281B I can clarify a few things. Firstly,</p> <p>4 this describes the fact that these were RSUs</p> <p>5 or stock awards made to former Lehman Brothers</p> <p>6 employees in the PIM business that were</p> <p>7 valueless at the time of acquisition because</p> <p>8 Lehman Brothers had no value. It was in</p> <p>9 bankruptcy.</p> <p>10 <b>Q. Oh, I see.</b></p> <p>11 A. Now, the clarification I could</p> <p>12 make here is you asked me earlier about why</p> <p>13 that \$11 million is not in the equity column.</p> <p>14 <b>Q. Um-hum.</b></p> <p>15 A. And this explains it. If you</p> <p>16 refer to the third paragraph down it says, "We</p> <p>17 propose making deferred cash awards that could</p> <p>18 vest in two years." And so would we deferred</p> <p>19 cash awards rather than stock awards.</p> <p>20 <b>Q. So they were not really new RSUs;</b></p> <p>21 <b>it's a cash award?</b></p> <p>22 A. Yes. And actually I would suggest</p> <p>23 it's incorrectly described on 281B.</p> <p>24 <b>Q. So Exhibit 281B it would be more</b></p> <p>25 <b>accurate to say deferred cash award issued in</b></p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>lieu of RSUs previously awarded?</b></p> <p>3 A. Based on my reading of this and my</p> <p>4 recollection having read it, that would be the</p> <p>5 case.</p> <p>6 <b>Q. When you say "this" you're talking</b></p> <p>7 <b>about Exhibit 284B?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Okay. So that would explain why</b></p> <p>10 <b>it's in the cash column and not the equity</b></p> <p>11 <b>column.</b></p> <p>12 A. Correct.</p> <p>13 <b>Q. Okay.</b></p> <p>14 MR. HINE: Chris, I have some</p> <p>15 questions about these types of documents</p> <p>16 so do you want to break for lunch?</p> <p>17 MR. GREEN: Do you have any idea</p> <p>18 of how much longer you're going to be</p> <p>19 going?</p> <p>20 MR. HINE: What I was going to</p> <p>21 suggest is we break for lunch and I</p> <p>22 could consolidate it into as neat a pile</p> <p>23 of questions as I can.</p> <p>24 MR. GREEN: That sounds fine.</p> <p>25 MR. HINE: Okay. Let's break for</p>

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL 2 lunch. 3 (Luncheon recess taken at 12:51 4 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL 2 AFTERNOON SESSION 3 (Time noted: 1:42 p.m.) 4 (Deposition Exhibit 285B, document 5 bearing production number 6 BCI-EX-00077651, marked for 7 identification as of this date.) 8 (Deposition Exhibit 286B, document 9 bearing production number 10 BCI-EX-00077621, marked for 11 identification as of this date.) 12 (Deposition Exhibit 287B, document 13 bearing production number 14 BCI-EX-00077466, marked for 15 identification as of this date.) 16 * * * 17 PAUL EXALL, resumed and testified 18 as follows: 19 EXAMINATION BY (Cont'd.) 20 MR. HINE: 21 Q. Good afternoon, Mr. Exall. I hope 22 you had a nice lunch. 23 A. Actually, I did. 24 Q. I want to return back to 25 Exhibit 284B for a minute. But first can you</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL 2 help me understand when we look at page 1 of 8 3 and I see you're modeling a \$1.4 billion 4 figure there as the total funding pool 5 available. How -- I'm just trying to 6 understand how that 1.4 billion figure is 7 different from the \$2 billion figure you're 8 modeling in the previous exhibit, 281B. 9 MR. GREEN: Object. Asked and 10 answered. 11 A. I don't understand. They are 12 different. 13 Q. Well, do you have any 14 understanding of why you're modeling 2 billion 15 in Exhibit 281B as opposed to 1.4 billion in 16 284B? 17 A. I'm not modeling 2 billion in any 18 place. That 2 billion is simply a reference 19 point on that schedule. I'm not modeling 2 20 billion. And neither am I modeling 21 1.4 billion in the other schedule. 22 Q. Well, poor choice of a verb. Why 23 is the -- the 2 billion is an accounting -- a 24 number that you were provided from the finance 25 department, right? For Exhibit 281B?</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL 2 A. I was told to use that number on 3 the schedule, yes. 4 Q. Okay. Well, why were you told to 5 use that number on 281B whereas 284B and 6 documents like that you're using 1.4 billion? 7 MR. GREEN: Object to the form of 8 the question. You can answer if you 9 know. 10 A. I don't know. Mr. Evans told me 11 to use 1.4 billion for the purpose of this 12 schedule. 13 Q. 284B? 14 A. 284B. 15 Q. Okay. And the finance folks told 16 you to use 2 billion for the Exhibit 281B? 17 A. Yes. 18 Q. Mr. Exall, I'm going to hand you 19 three exhibits marked as 285B, 286B and 287B. 20 They are e-mails with the Bates ranges 21 BCI-EX-00077651, 77621, and 77466 22 respectively. If you could take a moment to 23 look at them I have a question or two to ask. 24 I think they're in order. 25 (Document review.)</p>

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Q. Just let me know when you've had a</p> <p>3 chance to look at them.</p> <p>4 (Document review continuing.)</p> <p>5 A. Yeah.</p> <p>6 Q. You've had a chance to look at</p> <p>7 them?</p> <p>8 A. Yes.</p> <p>9 Q. You'll see in the first exhibit</p> <p>10 which is an e-mail dated September 17th, Mr.</p> <p>11 Clackson is writing to Mr. Evans and Mr. Ricci</p> <p>12 and he writes, "This is a problem. They have</p> <p>13 2 billion in the agreement. I was relying on</p> <p>14 you guys telling me I needed 1.35 billion</p> <p>15 which gave me 650 million of the goodwill.</p> <p>16 But the paragraph below says we have to pay it</p> <p>17 to them/can't use. Archie says we have agreed</p> <p>18 to this."</p> <p>19 And then he refers to paragraph</p> <p>20 9.1(c) of the APA.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Do you have any recollections or</p> <p>24 any understanding of this issue being</p> <p>25 discussed by senior Barclays management prior</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 to the closing of the sale transaction?</p> <p>3 MR. GREEN: Object to the form.</p> <p>4 Does he have recollection of Barclays</p> <p>5 senior management discussing this issue?</p> <p>6 MR. HINE: Yeah.</p> <p>7 Q. I understand you're not on this</p> <p>8 e-mail but I was wondering if this e-mail</p> <p>9 prompts you to recall any discussions among</p> <p>10 senior Barclays management about this issue.</p> <p>11 A. What I can see is that there is</p> <p>12 some discussion going on in the e-mail</p> <p>13 seemingly in respect of this issue. I don't</p> <p>14 personally have knowledge of any discussions</p> <p>15 that may or may not have taken place between</p> <p>16 Mr. Ricci, Mr. Clackson, and Mr. Evans or Mr.</p> <p>17 Cox in this regard.</p> <p>18 Q. Okay. You don't have any</p> <p>19 recollection of discussing this issue with Mr.</p> <p>20 Evans at all?</p> <p>21 A. I have no recollection. A</p> <p>22 specific recollection of a specific</p> <p>23 conversation I had with Mr. Evans. I have --</p> <p>24 for clarity I received a copy of this e-mail</p> <p>25 in and around the time but I have no</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 recollection of the specific conversation I</p> <p>3 had with Mr. Evans in this regard.</p> <p>4 Q. How did you receive a copy of this</p> <p>5 e-mail?</p> <p>6 A. Mr. Clackson forwarded it to me.</p> <p>7 Q. Okay. And why did he do that?</p> <p>8 MR. GREEN: Objection.</p> <p>9 A. I don't know why he forwarded it</p> <p>10 to me. I could speculate but I don't know why</p> <p>11 Mr. Clackson forwarded it to me.</p> <p>12 Q. Well, why do you think he</p> <p>13 forwarded it to you?</p> <p>14 A. I would guess that he realized --</p> <p>15 let me start again.</p> <p>16 I worked with Mr. Clackson for</p> <p>17 several years. We've known each other for</p> <p>18 several years and he understands my job role</p> <p>19 and responsibility. And I resume that he</p> <p>20 thought that I would have needed to know what</p> <p>21 was contained in these e-mails as part of</p> <p>22 those responsibilities.</p> <p>23 Q. What was Mr. Clackson's role?</p> <p>24 He's a finance individual?</p> <p>25 A. He's a chief financial officer for</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Barclays Capital.</p> <p>3 Q. Okay. Do you see further on Mr.</p> <p>4 Ricci writes, "Never agreed to it. Archie,</p> <p>5 this is a problem. We can't have this clause</p> <p>6 I don't think."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Any recollection of any senior</p> <p>10 folks at Barclays discussing whether they</p> <p>11 could agree to this 9.1(c) clause?</p> <p>12 MR. GREEN: You mean separate and</p> <p>13 apart from his testimony that he was</p> <p>14 forwarded a copy of this e-mail?</p> <p>15 MR. HINE: Yes, yes.</p> <p>16 A. No. I was not involved in any</p> <p>17 discussion that may or may not have taken</p> <p>18 place.</p> <p>19 Q. Is it possible this 1.35 billion</p> <p>20 is the reason you were asked to use</p> <p>21 1.4 billion in 284B?</p> <p>22 MR. GREEN: Objection. Calls for</p> <p>23 speculation.</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. If you'll turn to the next</p>

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 exhibit you'll see Mr. Evans' response to Mr.</p> <p>3 Clackson's original e-mail where he says in</p> <p>4 part, "They had already accrued 1.5 and we</p> <p>5 collectively tried to back into the bonus</p> <p>6 number for the parts we were taking."</p> <p>7 Do you see that?</p> <p>8 A. I see this.</p> <p>9 Q. Do you know what he's referring to</p> <p>10 there?</p> <p>11 A. No.</p> <p>12 Q. Do you have any understanding of</p> <p>13 what he's referring to?</p> <p>14 A. I have no specific understanding</p> <p>15 of that, no.</p> <p>16 Q. How about a general understanding?</p> <p>17 A. Without speculating, I couldn't</p> <p>18 say. I was not involved in this conversation.</p> <p>19 Q. What do you think he's talking</p> <p>20 about?</p> <p>21 MR. GREEN: Object. Calls for</p> <p>22 speculation.</p> <p>23 A. If I was to speculate -- well,</p> <p>24 personally I would suggest you ask Mr. Evans.</p> <p>25 I can't speak for Mr. Evans and what he</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 intended by this e-mail.</p> <p>3 MR. GREEN: I don't think he</p> <p>4 should speculate about what Mr. Evans</p> <p>5 may or may not have meant in the</p> <p>6 document.</p> <p>7 MR. HINE: Well, are you</p> <p>8 instructing him not to answer?</p> <p>9 MR. GREEN: Yeah. I am going to</p> <p>10 instruct him not to answer that</p> <p>11 question. It calls for speculation on</p> <p>12 the part --</p> <p>13 MR. HINE: All right. I think I'm</p> <p>14 allowed to ask him for speculation.</p> <p>15 You're not allowed to instruct him not</p> <p>16 to answer on that ground.</p> <p>17 Q. So I'm going to ask you again.</p> <p>18 Can you speculate on what you think he's</p> <p>19 talking about here? If your counsel tells you</p> <p>20 not to, then, fine but --</p> <p>21 MR. GREEN: You can go ahead</p> <p>22 and -- if you have an answer.</p> <p>23 A. Can I read the e-mail?</p> <p>24 Q. Sure.</p> <p>25 (Document review.)</p>
Page 208	Page 209
<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 A. I would speculate, and I stress</p> <p>3 this is speculation, I can't speak for Mr.</p> <p>4 Evans and what he really intends in this</p> <p>5 e-mail. What I would infer from this e-mail</p> <p>6 reading it independently is that Mr. Evans</p> <p>7 seems to represent that they, and I presume</p> <p>8 they refers to Lehman Brothers, had already</p> <p>9 accrued 1.5. I would speculate that that's</p> <p>10 \$1.5 billion. And we collectively tried to</p> <p>11 back into the bonus number for the parts we</p> <p>12 were taking. I would speculate that that</p> <p>13 phrase -- or I would speculate that that</p> <p>14 sentence implies that Lehman Brothers had a</p> <p>15 bonus accrual on their books and records to</p> <p>16 the equivalent of \$1.5 billion and that that</p> <p>17 represented the accrual for the firm as a</p> <p>18 whole internationally; whereas, we were</p> <p>19 obviously interested at this point in</p> <p>20 acquiring the US operations of Lehman Brothers</p> <p>21 under the sale agreement. Again, that's pure</p> <p>22 speculation.</p> <p>23 Q. I understand.</p> <p>24 A. I have never seen the books and</p> <p>25 records of Lehman Brothers and have no way of</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 verifying that number.</p> <p>3 Mr. Evans then writes, "He has</p> <p>4 repeatedly said I was nervous about the</p> <p>5 numbers and how robust and complete they are,"</p> <p>6 I believe that speaks for itself.</p> <p>7 "As for the language below I never</p> <p>8 saw any of it nor was I invited to review it."</p> <p>9 Again speaks for it.</p> <p>10 "I will call you when I finish</p> <p>11 something."</p> <p>12 Q. Do you recall Mr. Evans ever</p> <p>13 saying anything about him being nervous about</p> <p>14 Lehman's compensation numbers?</p> <p>15 MR. GREEN: You mean separate and</p> <p>16 apart from what's contained in this</p> <p>17 e-mail?</p> <p>18 Q. Well, it suggests that -- he says</p> <p>19 "I repeatedly said I was nervous."</p> <p>20 My question to you is do you</p> <p>21 recall having any understanding or discussions</p> <p>22 with Mr. Evans at the time that he was nervous</p> <p>23 about their numbers?</p> <p>24 A. I recall us all being -- and</p> <p>25 you're saying nervous. I would say it a</p>

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 different way. I would say that we were</p> <p>3 supplied information as part of the due</p> <p>4 diligence under the initial transaction. And</p> <p>5 that never took place. And we performed due</p> <p>6 diligence work on that collectively. I was</p> <p>7 part of that.</p> <p>8 I would suggest, though, that</p> <p>9 you're never really -- you're at the mercy,</p> <p>10 for want of a better phrase, of what is</p> <p>11 supplied to you. You have no way of</p> <p>12 physically verifying the accuracy of those</p> <p>13 records at the time you're doing such work in</p> <p>14 such a short time frame.</p> <p>15 Q. Sure.</p> <p>16 A. That we had no ability to trace,</p> <p>17 for example, an individual bonus or</p> <p>18 compensation award made to any individual at</p> <p>19 Lehman Brothers for the 2007 or prior</p> <p>20 financial year to any payroll records at</p> <p>21 Lehman Brothers.</p> <p>22 Consequently, I think when Mr.</p> <p>23 Evans refers to being nervous about their</p> <p>24 numbers and how robust and complete they are,</p> <p>25 again I'm speculating as to what he means in</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 that regard and you should ask him. I'll</p> <p>3 infer that it's an extension of that fact that</p> <p>4 we just don't -- did not at the time have any</p> <p>5 access to the books and records of Lehman</p> <p>6 Brothers other than what they supplied to us.</p> <p>7 We were taking a lot of this on faith, for</p> <p>8 want of a better phrase.</p> <p>9 Q. I know you said you did some due</p> <p>10 diligence as to the earlier transaction. Did</p> <p>11 you do any compensation-related due diligence</p> <p>12 in the week of September 15th to the 22nd?</p> <p>13 A. I think I would have performed</p> <p>14 work -- I don't recall the specifics of it</p> <p>15 other than things like preparing these</p> <p>16 schedules or something or similarly related</p> <p>17 issues. I wouldn't characterize it as due</p> <p>18 diligence.</p> <p>19 For all intents and purposes I've</p> <p>20 testified before from my perspective this</p> <p>21 transaction had already effectively completed.</p> <p>22 I understand the legal technicality of it</p> <p>23 having been approved on the 22nd of September</p> <p>24 but I couldn't categorize the work as I was</p> <p>25 doing as due diligence.</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Q. You did come to New York during</p> <p>3 the week.</p> <p>4 A. Yes.</p> <p>5 Q. And I think you previously said</p> <p>6 you thought the transaction had been closed by</p> <p>7 then; is that right?</p> <p>8 A. Yes. I believe that to be the</p> <p>9 case. If it was the 22nd of September it's</p> <p>10 possible I actually arrived on that day in New</p> <p>11 York.</p> <p>12 Q. Okay.</p> <p>13 A. I just don't have the exact date</p> <p>14 at hand.</p> <p>15 Q. Okay. And is it fair to</p> <p>16 characterize the work you did upon your</p> <p>17 arrival in New York as relating to the signing</p> <p>18 up of employment contracts with your new</p> <p>19 employees from Lehman?</p> <p>20 MR. GREEN: Object to the form.</p> <p>21 Q. Or was it more the analysis type</p> <p>22 of things that were embodied in, for example,</p> <p>23 Exhibit 284B?</p> <p>24 A. I was never involved in</p> <p>25 negotiations or contractual issues in that</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 regard with specific individuals. My work was</p> <p>3 if you want to characterize it more, as you</p> <p>4 say, in respect to modeling and work done in</p> <p>5 such.</p> <p>6 Q. Okay. Do you see the title in</p> <p>7 this e-mail is \$650 million problem.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Did you ever hear that phrase used</p> <p>11 at Barclays at around this time?</p> <p>12 A. Other than seeing a copy of this</p> <p>13 e-mail, no.</p> <p>14 Q. Were you copied on the second</p> <p>15 e-mail as well, Exhibit --</p> <p>16 A. I believe Mr. Clackson forwarded</p> <p>17 me a copy of this e-mail.</p> <p>18 Q. Okay.</p> <p>19 A. In the same way that he forwarded</p> <p>20 me a copy of the previous exhibit.</p> <p>21 Q. Okay. So you're talking about</p> <p>22 Exhibit 286B and 285B?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. Do you recall any</p> <p>25 discussions among people at Barclays about an</p>

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 effort to locate the financial schedule  
3 referred to in the APA, in other words  
4 Exhibit 19?

5 MR. GREEN: Object to the form.

6 A. I recall asking Mr. Clackson for a  
7 copy of the schedule and I recall receiving a  
8 copy of the schedule from him.

9 Q. Okay. But my question is I've  
10 seen some e-mails -- I don't want to introduce  
11 every document I have as an exhibit, but I've  
12 seen some e-mails where people were asking for  
13 copies of it and trying to locate it. Were  
14 you involved at all in trying to locate that  
15 schedule?

16 A. No, I wasn't. I received it from  
17 Mr. Clackson. I was perhaps one of the people  
18 asking for it.

19 Q. Okay. But you received it shortly  
20 after you asked for it?

21 A. I believe so. I don't recall  
22 when.

23 Q. Fair enough.

24 On the last exhibit I gave you,  
25 317 -- or I'm sorry -- 287B, Mr. Clackson

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 writes, "So it looks like we have to pay them  
3 2 billion min bonuses."

4 Do you see that?

5 A. Yes, I do.

6 Q. Do you recall any discussions at  
7 or around this time where Barclays concludes  
8 that it has to pay 2 billion in bonuses to  
9 former Lehman employees?

10 MR. GREEN: Object to the form of  
11 the question.

12 A. No.

13 Q. Did that conclusion prompt you  
14 ever to change the \$1.4 billion number that  
15 you used in your analysis such as that in  
16 Exhibit 284B?

17 MR. GREEN: That conclusion being  
18 what, Bill?

19 Q. That Barclays would have to pay 2  
20 billion min in bonuses.

21 MR. GREEN: Object to the form of  
22 the question.

23 A. I don't believe there ever was a  
24 conclusion as you phrased it.

25 Q. Okay.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**

2 A. I don't believe I ever changed  
3 that 1.4 billion number in any way whatsoever  
4 in relation to this series of e-mails you've  
5 presented to me.

6 Q. Okay. Just so I just get a clear  
7 record here, you previously testified that you  
8 prepared several versions of Exhibit 284B,  
9 correct?

10 A. That's correct.

11 Q. Okay. So are you saying now that  
12 in all of those versions you always used 1.4  
13 billion as the total pool funding available?

14 A. No. That's not what I'm saying.  
15 I can't recall what that iterated to over  
16 time.

17 Q. Oh.

18 A. What I'm saying is that the  
19 changes made were never prompted by the --  
20 first of all, the e-mails you've placed in  
21 front of me, and, secondly, the amount of 2  
22 billion that you have referred to.

23 Q. Okay. Do you recall if any of the  
24 iterations of Exhibit 284B uses a \$2 billion  
25 figure in the total pool funding available

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 block?

3 A. I don't recall.

4 Q. Okay. Do you think it did?

5 A. I don't know.

6 Q. Okay. Could you turn to 284B  
7 then.

8 A. Sure.

9 Q. In the -- below the chart that  
10 we've previously discussed it says Material  
11 changes since last update.

12 Do you see that?

13 A. I do.

14 Q. And it talks about -- the first  
15 two entries talk about changes with respect to  
16 arrangements for IBD.

17 Do you see that?

18 A. Yes.

19 Q. Was there some kind of special  
20 arrangement for IBD made during this period  
21 that set them apart from other divisions of  
22 Lehman employees that you were taking on?

23 A. No.

24 Q. Okay. So this is just a report of  
25 the current status of the offers made to IBD

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **personnel?**  
3 A. No. That's not correct. This  
4 material changes since last update section  
5 refers to the changes made to this table and  
6 the movements from the previous day to the  
7 previous iteration thereof. So subsequently  
8 it states here that the movements in the  
9 committed spend number -- well, it says the  
10 committed spend is increased by \$3 million.  
11 In this instance a \$3 million movement was all  
12 in IBD. In other iterations you'll see it in  
13 other places.  
14 Q. Okay. Fair enough. If you skip  
15 further down it says Current funding  
16 pressures.  
17 Do you see that?  
18 A. Yes.  
19 Q. It says, These funding pressures  
20 currently exist that are -- I'm sorry.  
21 MR. GREEN: I'm sorry. I don't  
22 see that. Can you tell me --  
23 MR. HINE: Toward the bottom in  
24 bold it says Current funding pressures.  
25 MR. GREEN: All right. I'm with

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 Q. So was it your understanding that  
3 the 1.4 billion bonus pool did not include  
4 that amount?  
5 A. That's correct. And it's  
6 reflected that way on the schedule.  
7 Q. Okay. Could you turn to the next  
8 page.  
9 Well, before you do on this you'll  
10 see three bullet points which I can read  
11 myself so I don't need you to explain but they  
12 basically talk about three funding pressures,  
13 right?  
14 A. Yes.  
15 Q. Now, if you turn to the next page  
16 it talks about sensitivity analysis.  
17 Does that relate to the three  
18 funding pressures in any way?  
19 MR. GREEN: Object to the form.  
20 A. I would say they do not directly  
21 relate. But it is all part of the same thing.  
22 If you have a specific question in mind --  
23 Q. Well, I guess I'm trying to figure  
24 out what's the sensitivity analysis  
25 encompassing?

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 you. Thanks.  
3 Q. And if I read it it says "Three  
4 funding pressures currently exist that are  
5 putting pressure on the original bonus pool  
6 estimate of 1.4 billion."  
7 Do you see that?  
8 A. I do.  
9 Q. Do you recall anything about where  
10 they came up with an original bonus pool  
11 estimate of 1.4 billion?  
12 MR. GREEN: Objection. Asked and  
13 answered repeatedly.  
14 A. I don't recall, no.  
15 Q. And now that 1.4 billion if I read  
16 the parenthetical correctly says Assumed to  
17 exclude funding for deferred cash awards.  
18 Do you see that?  
19 A. I do.  
20 Q. And I believe you testified  
21 earlier about the deferred cash award in the  
22 block at the top has to do with what we --  
23 what have been called special cash awards in  
24 the contracts; is that right?  
25 A. That is correct.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 A. Well, as stated here, it considers  
3 the impact on the residual population that is  
4 not guaranteed assuming 3,300 in redundancies.  
5 Q. All right. Okay. Let's take a  
6 minute on that because I can read it, too, but  
7 if you look at the chart on the prior page  
8 where it says Footnote 3, estimated pool  
9 requirement for 75 percent of 2007 total  
10 compensation for original.  
11 A. Yes.  
12 Q. Do you see that?  
13 And if you continue it talks about  
14 a residual population in footnote 3.  
15 A. Yes.  
16 Q. What I'm trying to understand is  
17 that residual population -- that use of the  
18 word residual population, and I believe  
19 previously, and I'm not trying to  
20 mischaracterize your testimony, you used that  
21 phrase in connection with the 10,000 employees  
22 listed as non-guaranteed population.  
23 So I'm just trying to understand  
24 the use of the phrase residual population.  
25 MR. GREEN: Object to the form of

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 the question. If there is a question.  
3 Q. Let me be more specific.  
4 Footnote 3, am I correct to say  
5 that relates only to the 402 individuals  
6 listed in the top part of the chart?  
7 A. Yes, it would.  
8 Q. So that -- what you're saying  
9 there is the 75 percent that was originally  
10 contemplated for between 175 and 200 people  
11 and then the 65 percent of 2,000 bonuses, that  
12 residual population is the difference between  
13 the 175 to 200 and the 402?  
14 MR. GREEN: Object to the form of  
15 the question. I didn't understand the  
16 question. I don't know if he understood  
17 the question.  
18 MR. HINE: Well, if he did he can  
19 answer it.  
20 A. Let me say it another way.  
21 Q. Yeah.  
22 A. This schedule states at this point  
23 in time 402 people had received contracts in  
24 the form of -- similar to the form of those.  
25 Q. Right.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Excuse me.  
3 The residual population in excess  
4 of the original 175 to 200 would have been  
5 modeled at 65 percent of their 2007 total  
6 bonus and they would also be included in the  
7 724 million.  
8 Q. And so in that sense residual  
9 population means the people over and above 175  
10 to 200 that brings you up to the 402, correct?  
11 A. That's correct. There were people  
12 that would have been in the non-guaranteed  
13 bucket on the schedule on the 10,111 that had  
14 flipped at this stage into the above bucket.  
15 Q. Okay. Now, if you turn to the  
16 next page you see the impact on the residual  
17 population. Are we talking about the same  
18 people there?  
19 A. No, we're not. We're talking  
20 about the residual 6,798 people.  
21 Q. Okay. So you're basically  
22 describing the effect of the actual offers  
23 that have been made and completing the  
24 expected bonus pool of 1.4 billion in this  
25 document?

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 A. The footnote 3 relates to what  
3 those individuals who received a guaranteed  
4 bonus in this form would have originally been  
5 modeled at under the reference point rules of  
6 the road, again for want of a better phrase.  
7 Q. Sure.  
8 A. In terms of our original estimate  
9 of what we would offer those individuals as a  
10 guaranteed bonus. What they were actually  
11 offered, if I take the population of 402, they  
12 were offered guaranteed bonuses of 862  
13 million.  
14 Q. Okay.  
15 A. Under the original reference  
16 points that we were using to model, what we  
17 would have offered them under those reference  
18 points would have been 704 million.  
19 Now, to sent extent that the 175  
20 to 200, yes. To the extent that those 175 to  
21 200 are included in the 402, those people  
22 would have been modeled at 75 percent of 2007  
23 total comp as a bonus. And that would have  
24 been included in the \$607 million here. The  
25 residual popula -- or sorry. \$774 million.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 A. I'm discussing the implication of  
3 the 558 million residual pool available for  
4 non-GB people. I'm discussing that impact in  
5 relation to their 2007 bonus, correct.  
6 Q. Okay. So the more you pay the top  
7 104 people the less that's available for the  
8 residual population.  
9 A. Assuming a 1.4 billion number.  
10 Q. Was there any discussion among  
11 senior people about this phenomenon that  
12 you're describing?  
13 A. I don't know.  
14 Q. Do you recall if they ever decided  
15 to increase the bonus pool from 1.4 billion  
16 after this summary was presented to them?  
17 MR. GREEN: The bonus pool  
18 indicated on this report?  
19 MR. HINE: Yeah.  
20 A. Are you asking me whether the 1.4  
21 billion on page 1 of 7 was ever increased?  
22 Q. Well, you see on the bottom --  
23 towards the bottom of page 1 of 7 it says  
24 Original bonus pool estimate of 1.4 billion.  
25 A. Um-hum.



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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Q. So my question is did your</p> <p>3 analysis about -- the sensitivity analysis</p> <p>4 about what would be left for the residual</p> <p>5 population ever cause Barclay senior</p> <p>6 management to increase their expected bonus</p> <p>7 pool?</p> <p>8 MR. GREEN: Object to the form of</p> <p>9 the question. If you know you can</p> <p>10 answer.</p> <p>11 A. I don't recall -- it's possible</p> <p>12 that the 1.4 billion reflected on page 1</p> <p>13 changed and was increased. I don't recall.</p> <p>14 Q. Okay.</p> <p>15 A. I would imagine if you have</p> <p>16 subsequent copies and you can show that to me</p> <p>17 then, you know, that's fine.</p> <p>18 Q. Okay.</p> <p>19 A. But I don't recall that number</p> <p>20 changing in that regard. It may have.</p> <p>21 Q. If it did it would be reflected in</p> <p>22 subsequent copies in that block where it says</p> <p>23 1.4 billion right now?</p> <p>24 A. I would think so.</p> <p>25 MR. GREEN: Well, I understood</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 your question to be about what did</p> <p>3 appear on the summary so by definition</p> <p>4 if it changed it would appear in</p> <p>5 subsequent copies of the summary.</p> <p>6 MR. HINE: Well, I don't</p> <p>7 understand that objection. My question</p> <p>8 is we haven't been provided all the</p> <p>9 copies. We requested all the copies.</p> <p>10 And you guys said you'd take it under</p> <p>11 advisement. I can't ask him the</p> <p>12 question because I don't have all the</p> <p>13 copies.</p> <p>14 Q. So my question is if the Barclays</p> <p>15 senior management raised the level of the</p> <p>16 bonus pool over 1.4 billion is it likely I</p> <p>17 would see it show up in one of your later</p> <p>18 analyses in that block?</p> <p>19 A. It's possible.</p> <p>20 Q. Yeah.</p> <p>21 A. As I said, I can't testify to the</p> <p>22 fact. I haven't seen -- I haven't referred</p> <p>23 back to the file or any subsequent copies of</p> <p>24 this particular memo.</p> <p>25 Q. Sure.</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: I have to object to</p> <p>3 that last question.</p> <p>4 RQ MR. HINE: All right. That's</p> <p>5 fine. And I reiterate our request to</p> <p>6 have all copies of this document, all</p> <p>7 iterations provided to us.</p> <p>8 MR. GREEN: All right.</p> <p>9 Q. Mr. Exall, could you turn to page</p> <p>10 3 of 7 which ends in Bates number 193.</p> <p>11 There's an attachment entitled Master</p> <p>12 Scorecard.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Could you tell me what this is</p> <p>16 attempting to model or reflect?</p> <p>17 A. If you refer down into the</p> <p>18 bottom -- if you read from the bottom of the</p> <p>19 table the last row being Total Pool Difference</p> <p>20 Based on Current Proposal, if you read five</p> <p>21 lines up you will see Total Business Proposed</p> <p>22 Bonus Award of \$862 Million. That refers to</p> <p>23 or ties back to the \$862 million on page 1 of</p> <p>24 7 under the Actual column in the Day 1 - 2008</p> <p>25 cost block.</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 So what page 3 of 7 is is a</p> <p>3 breakout of -- by business area the old Lehman</p> <p>4 Brothers business area I would say of how that</p> <p>5 862 million as well as some of the other items</p> <p>6 reflected in that table are in fact split by</p> <p>7 business.</p> <p>8 Q. And then when I see total head</p> <p>9 count, 402, that's the 402 we talked about on</p> <p>10 page 1 of 7, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then below the total</p> <p>13 business proposed bonus awards it talks about</p> <p>14 total BarCap bonus pool per formula.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And what is that meant to reflect?</p> <p>18 A. That \$723,773,471 refers back to</p> <p>19 the 724 million rounded number under the</p> <p>20 original model column which I believe we've</p> <p>21 explained.</p> <p>22 Q. Yes, okay. And then continuing</p> <p>23 down it says Total 2009 Bonus Awards. What is</p> <p>24 that?</p> <p>25 A. Again, referring back to page 1 of</p>

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 7 it's the second year GB column totalling  
3 \$111 million.  
4 Q. Okay. So that's guaranteed  
5 bonuses for the following year, 2009?  
6 A. Yeah. That's correct.  
7 Q. Okay.  
8 A. You'll find all these numbers tie  
9 back.  
10 Q. The total special cash award is  
11 the total of the block that's entitled One  
12 Time Deferred Cash Award; is that right?  
13 A. Correct.  
14 Q. All right. And the Total Pool  
15 Difference just to complete?  
16 A. Is the difference between the 862  
17 million and the 724 million.  
18 Q. So that's the bottom of the  
19 Overspend column.  
20 A. That's correct.  
21 Q. Could you just -- in the bottom  
22 you have notes. It says Senior management  
23 2008 bonus equals 80 percent of 2007 TC (plus  
24 deferred cash) equals 50 percent '07 TC as a  
25 special cash award.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 employees down below senior management?  
3 A. Yes.  
4 Q. How does that -- how do these two  
5 terms in this note, senior management and tier  
6 1 relate if at all to the Elite 8 entry on the  
7 first page?  
8 A. If you look on the first page the  
9 Elite 8 is footnoted as actually being nine  
10 individuals.  
11 Q. Right.  
12 A. And counted as such in the  
13 schedule.  
14 Q. Right.  
15 A. If you refer to page 3 of 7 you'll  
16 see in the senior management bucket it is nine  
17 individuals. It is those individuals to which  
18 the footnote relates. The senior management  
19 block.  
20 Q. Oh, I see. I gottcha. At the  
21 bottom of the chart. Okay. So senior  
22 management is effectively the Elite 8 plus one  
23 other individual.  
24 A. I don't think anyone can figure  
25 one out.

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Is that the scheme that Barclays  
3 was applying at this time to figure out the  
4 bonuses that would be awarded to Lehman senior  
5 management?  
6 MR. GREEN: Object to the form of  
7 the question.  
8 A. I don't think your use of the word  
9 "scheme" is correct.  
10 Q. Okay.  
11 A. I would say again these were  
12 reference points and rules of the road, so to  
13 speak, that were applied generally to these  
14 categories of individuals. Individual  
15 contracts were negotiated on an individual  
16 basis and individual awards were agreed on  
17 that basis.  
18 Q. I understand.  
19 A. That was, as I suggested, a  
20 reference point.  
21 Q. Well, I guess my -- I'm trying to  
22 figure out the difference between -- you'll  
23 see the second entry says Tier 1.  
24 A. Um-hum.  
25 Q. I assume that's one tier of

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1 P. EXALL - HIGHLY CONFIDENTIAL  
2 Q. Now, who are the tier 1 folks?  
3 A. The tier 1 would refer back to  
4 the -- if I refer back to page 1 under  
5 footnote 3 to the chart, the phrase original  
6 175 to 200 population. That is in effect the  
7 tier 1.  
8 Q. I gottcha. Okay. So that's --  
9 okay. Thank you very much for that  
10 clarification.  
11 Could you turn to page 5 of 7 of  
12 this chart. Could you just tell me what the  
13 purpose of this attachment is?  
14 A. Give me a moment to refresh my  
15 memory.  
16 Q. Sure.  
17 (Document review.)  
18 A. Attachment 3 is labeled on page 5  
19 is addressed or elaborates on the attachment 3  
20 reference in the sensitivity analysis section  
21 on page 2. And is effectively the workings  
22 behind the bullet points contained therein.  
23 Q. Okay. And is it correct to say  
24 that the conclusion of that analysis is if we  
25 want to pay 65 percent to the residual

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>population we're going to have to add another</b></p> <p>3 <b>\$275 million to the pool?</b></p> <p>4 MR. GREEN: Object to the form.</p> <p>5 A. What it means is that with</p> <p>6 \$406 million as reflected in attachment 3 of</p> <p>7 residual funding based on these assumptions</p> <p>8 and reference points made in this report, were</p> <p>9 we to attempt to deliver 65 percent of the</p> <p>10 residual non-guaranteed population to the</p> <p>11 extent that we would guarantee -- we would pay</p> <p>12 them 65 percent of their 2007 total bonus, we</p> <p>13 would be -- we would require to pay an</p> <p>14 additional \$270 million.</p> <p>15 <b>Q. Okay. And did Barclays do that?</b></p> <p>16 A. Do what?</p> <p>17 <b>Q. Add 270 million to the bonus pool.</b></p> <p>18 MR. GREEN: Object to the form of</p> <p>19 the question.</p> <p>20 <b>Q. Well, let me rephrase it.</b></p> <p>21 <b>Did Barclays ever pay the</b></p> <p>22 <b>65 percent of '07 bonus to that residual</b></p> <p>23 <b>population you just talked about?</b></p> <p>24 A. I don't believe any -- I mean,</p> <p>25 individual bonus payments are individual</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 specific. Some people would have got</p> <p>3 65 percent. Some people would have got more.</p> <p>4 Some people would have got less. I can't</p> <p>5 speak -- but, in general, people were paid as</p> <p>6 reflected on the schedule discharging -- you</p> <p>7 know, where the discharge of our obligations</p> <p>8 under the pre-acquisition service clause for</p> <p>9 our Lehman Brothers employees.</p> <p>10 MR. GREEN: 281B?</p> <p>11 <b>Q. You're talking about 281B?</b></p> <p>12 A. 281B. That is the discharge of</p> <p>13 the relevant obligations.</p> <p>14 <b>Q. Okay. I guess, well, do you</b></p> <p>15 <b>recall any discussion or understanding that</b></p> <p>16 <b>Barclays was going to try to pay 65 percent</b></p> <p>17 <b>level to the residual population?</b></p> <p>18 A. The original modeling as you can</p> <p>19 see here and throughout there are footnotes to</p> <p>20 it, a reference point was always 65 percent of</p> <p>21 prior year bonus for a residual population.</p> <p>22 <b>Q. And did Barclays achieve that?</b></p> <p>23 A. I don't recall in aggregate what</p> <p>24 the -- again, I stress what was paid is</p> <p>25 reflected in schedule 281B.</p>
Page 236	Page 237
<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. Okay.</b></p> <p>3 A. If you're asking me what is that</p> <p>4 in relation to their 2007 comp, I don't know</p> <p>5 for certain.</p> <p>6 <b>Q. Okay. In the second bullet point</b></p> <p>7 <b>on page 5 of 7 it says Severances of 2,300 are</b></p> <p>8 <b>assumed in the above analysis.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. Sorry.</p> <p>11 <b>Q. The second bullet point under</b></p> <p>12 <b>Observations on page 5 of 7.</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And that's -- that is the assumed</b></p> <p>15 <b>reductions in force that we talked about</b></p> <p>16 <b>earlier reflected on page 1 of 7?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Okay. So those severances are not</b></p> <p>19 <b>part of this bonus pool analysis that you're</b></p> <p>20 <b>doing at the top of the page.</b></p> <p>21 A. My recollection is that we would</p> <p>22 have estimated a reduction in force of 3,300</p> <p>23 people as specified here and that would have</p> <p>24 been taken into consideration when this model</p> <p>25 was produced.</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. Well, how was it reflected in this</b></p> <p>3 <b>model?</b></p> <p>4 <b>And, again, I'm looking at page 5</b></p> <p>5 <b>of 7.</b></p> <p>6 A. We would have eliminated 3,300</p> <p>7 head count from the analysis in determining</p> <p>8 the gap to 65 percent as labeled on this</p> <p>9 spreadsheet. We would have eliminated people</p> <p>10 to that extent that we would have assumed that</p> <p>11 they are out.</p> <p>12 <b>Q. Okay. So that's column -- the</b></p> <p>13 <b>third column marked HC, that means head count?</b></p> <p>14 A. Yeah. That -- yes, that's right.</p> <p>15 <b>Q. So that 3,300 is removed from the</b></p> <p>16 <b>head count to arrive at that column, correct?</b></p> <p>17 A. No. I would suggest that the</p> <p>18 numbers here are pre -- that 10,950 grand</p> <p>19 total would have the 3,300 in it. But when we</p> <p>20 would have modeled -- the numbers as modeled</p> <p>21 here would have assumed that they had been</p> <p>22 taken out during the course of the redundancy</p> <p>23 exercise. That's the starting point position.</p> <p>24 <b>Q. Okay. So you would model some</b></p> <p>25 <b>form of severance payment to these folks to</b></p>

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **take them out of this bonus analysis.**  
3 MR. GREEN: Object to the form of  
4 the question.  
5 A. Yes. If you refer to note 5 on  
6 the schedule which relates to column E plus,  
7 you know, 65 percent of residual '07 bonus  
8 plus severances, footnote 5 states that  
9 65 percent of the comparative '07 actual bonus  
10 pool relates to the non-targeted, non-GB  
11 population (less estimated 3,300 proportional  
12 head count reduction).  
13 So that would have assumed that  
14 3,300 people had been removed from that  
15 residual population.  
16 Q. Okay. And so they don't have to  
17 get a bonus.  
18 A. They would have received a  
19 severance. Or would be eligible for a  
20 severance.  
21 Q. All right.  
22 I just want to show you one other  
23 version of this chart. I'm not going to go  
24 line by line but I do have a couple questions.  
25 MR. HINE: Let's mark this

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 at which we took the download out of the  
3 underlying system that held the data. The one  
4 previous is time stamped 8:50 of the prior  
5 day. There would have been an evening  
6 version.  
7 Q. I see. Okay.  
8 I just had some select questions  
9 on here. We previously talked about the PIM  
10 individuals.  
11 A. Yes.  
12 Q. And so I'm -- I would refer you to  
13 page 4 of 7 where -- under the title  
14 Forgivable Loan.  
15 Do you see that?  
16 A. I do.  
17 Q. And it appears to represent some  
18 kind of loan provided to certain PIM  
19 employees. Could you explain to me what's  
20 going on with this paragraph or what this is  
21 describing?  
22 A. If we read it it says  
23 approximately 90 to 100 PIMs will receive an  
24 upfront tax-free cash payment as a loan. This  
25 loan has a seven-year term and is then

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 (Deposition Exhibit 288B, document  
3 bearing production numbers  
4 BCI-EX-(S)-00027258 through  
5 BCI-EX-(S)-00027265, marked for  
6 identification as of this date.)  
7 BY MR. HINE:  
8 Q. Mr. Exall, I'm handing you a copy  
9 of a document marked as Exhibit 288B which is  
10 dated Wednesday, September 24th. It appears  
11 to be a similar summary report. It's got  
12 badges BCI-EX-(S)-00027258 through 27265.  
13 After you've had a chance to look  
14 at it let me know.  
15 A. Yeah. Okay. I'm okay.  
16 Q. Am I correct to assume this is the  
17 similar summary report prepared the following  
18 day?  
19 A. Yes, it is. I would suggest it's  
20 not the subsequent one. At this point in time  
21 I believe we were doing one in the morning and  
22 one in the evening. And this would be the  
23 following morning's one. As you see it's time  
24 stamped 7:45, 24 September 2008 in the  
25 subject. That 7:45 would represent the time

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 forgiven in seven annual installments. If the  
3 PMI leaves during the loan period, he is  
4 required to repay that portion of the loan  
5 that is not yet forgiven. This is standard  
6 practice in this industry and is utilized as a  
7 strong retention tool. We need to do this to  
8 be competitive in terms of recruiting and  
9 retaining top producers.  
10 Q. All right.  
11 A. So these are effectively tax-free  
12 cash payments made upfront to these  
13 individuals that represent a loan and as they  
14 serve their time with us under their  
15 employment these loans are forgiven and are  
16 not required to be paid back in several  
17 tranches, in this case over seven years.  
18 Q. Okay. And this is a means -- this  
19 is a method of helping retain these employees?  
20 A. That's correct.  
21 Q. Now, when we previously -- I refer  
22 you back to Exhibit 281B.  
23 A. Yes.  
24 Q. Your spreadsheet. Are these loans  
25 to PMI employees reflected in any way on this

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 spreadsheet on Exhibit 281B?  
3 A. No, they're not.  
4 Q. And that's because it doesn't  
5 relate to their employment back when they were  
6 with Lehman; is that correct?  
7 A. That's correct.  
8 Let me clarify that.  
9 Q. Okay.  
10 A. They would have had similar  
11 arrangements with Lehman Brothers that are  
12 separate and distinct from these. But because  
13 these relate to post-acquisition service in  
14 respect of service with Barclays looking  
15 forward they're not on the schedule.  
16 Q. Okay. So they're not on the  
17 Exhibit 281B.  
18 A. No, they're not.  
19 Q. Okay. Mr. Exall, I'm going to  
20 hand you a document here just to see if you  
21 have any involvement in it. I don't know if  
22 you do or not. But I'll mark it as an exhibit  
23 that relates to a synergy analysis.  
24 (Deposition Exhibit 289B, document  
25 bearing production number

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 Exall, is did you have any involvement in any  
3 type of synergy analysis like this?  
4 A. I've never seen this before.  
5 Q. You've never seen this document  
6 before?  
7 A. (Witness shakes head.)  
8 Q. Do you know who at Barclays would  
9 be involved in this type of synergy analysis?  
10 A. Clearly the people involved here  
11 are Mr. Syal, Mr. Ricci, and Mr. Clackson.  
12 Q. And they're all -- that's the  
13 finance group?  
14 A. Mr. Ricci is the chief operating  
15 officer for investment banking and investment  
16 management. And Mr. Clackson is our chief  
17 financial officer. And Mr. Syal works for Mr.  
18 Clackson.  
19 MR. GREEN: And you're indicating  
20 the people that received this e-mail.  
21 THE WITNESS: Mr. Syal sent the  
22 e-mail to Mr. Ricci and a copy to Mr.  
23 Clackson.  
24 MR. GREEN: Right.  
25 MR. HINE: Your counsel is just

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 BCI-EX-00077557, marked for  
3 identification as of this date.)  
4 (Deposition Exhibit 290B, document  
5 bearing production numbers  
6 BCI-EX-00077542 through BCI-EX-00077543,  
7 marked for identification as of this  
8 date.)  
9 BY MR. HINE:  
10 Q. Mr. Exall, I'm handing you two  
11 documents. One marked 289B which is Bates  
12 stamped BCI-EX-00077557 which is entitled --  
13 subject matter entitled Long Island - Synergy  
14 and Integration Assumptions.  
15 Do you see that?  
16 A. I do.  
17 Q. And then the second document which  
18 is marked as Exhibit 290B is Bates stamped  
19 BCI-EX-00077542 through 543. It appears to us  
20 to be a document entitled Final Synergy and  
21 Integration Assumptions.  
22 But I'm not sure they were  
23 produced separately, Chris, so I can't  
24 represent that they're the same document.  
25 And my real question to you, Mr.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 asking --  
3 MR. GREEN: You don't have any  
4 independent -- other understanding  
5 independent of this e-mail of who was  
6 involved in this process.  
7 THE WITNESS: No. It seems to me  
8 these are the right people to be  
9 involved.  
10 Q. Okay. Your department, the human  
11 resources folks, is it correct to say that you  
12 folks did not get involved in a synergy  
13 analysis like this?  
14 MR. GREEN: Object to the form.  
15 A. I don't know. As I've said, I've  
16 never seen these documents particularly. I've  
17 never seen these e-mails. Is it possible that  
18 Mr. Syal or one of his colleagues or Mr.  
19 Clackson or Mr. Ricci, in fact, asked me or  
20 myself -- me or one of my colleagues in human  
21 resources about certain items that may or may  
22 not be represented in these documents, it's  
23 possible. I don't know.  
24 Q. Do you have any recollection of  
25 providing compensation related information to

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 someone performing a synergy analysis at  
3 Barclays?  
4 MR. GREEN: Object to the form of  
5 the question.  
6 A. Not specifically, no.  
7 **Q. Do you have any general**  
8 **recollection of providing compensation**  
9 **information to folks at finance for purposes**  
10 **of a synergy analysis?**  
11 A. Nothing specific. My primary  
12 contact in the finance department in all of  
13 this was Mr. Romaine.  
14 **Q. Okay.**  
15 A. And I do not know what his  
16 involvement was or may or may not have been in  
17 this regard.  
18 **Q. Okay.**  
19 (Deposition Exhibit 291B, document  
20 bearing production numbers  
21 BCI-EX-00078069 through BCI-EX-00078071,  
22 marked for identification as of this  
23 date.)  
24 BY MR. HINE:  
25 **Q. Mr. Exall, I'm handing you a copy**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **Q. Do you recall any discussion about**  
3 **that issue in connection with any of your work**  
4 **at Barclays?**  
5 A. No.  
6 **Q. Do you recall any discussion about**  
7 **possibly modifying the Asset Purchase**  
8 **Agreement to reflect the incorporation of the**  
9 **PIM business into Barclays?**  
10 A. No.  
11 **Q. Okay. I've asked you some**  
12 **questions about the PIM business throughout**  
13 **this deposition. Is there anything related to**  
14 **the PIM business in connection with your**  
15 **analysis that you performed that you haven't**  
16 **already testified about?**  
17 MR. GREEN: Can you clarify which  
18 analysis you're referring to?  
19 MR. HINE: I'm talking about  
20 Exhibit 281B.  
21 MR. GREEN: 281B.  
22 A. In what respect? I don't  
23 understand the question.  
24 **Q. I'm just trying to see if there's**  
25 **anything out there relating to the PIM**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 of Exhibit 291B which is an e-mail chain dated  
3 September 19th. It's Bates stamped  
4 BCI-EX-00078069 through -071. Please let me  
5 know when you've had a chance to look at it.  
6 A. Fine.  
7 **Q. Have you ever seen this e-mail**  
8 **before, Mr. Exall?**  
9 A. No.  
10 **Q. If I draw your attention to the**  
11 **middle of the first page you'll see an e-mail**  
12 **from a Mr. Kohn and then it's referencing a**  
13 **proposed language for clause 9.1(c).**  
14 **Do you see that?**  
15 A. I see it referred to.  
16 **Q. Okay. And then toward the**  
17 **bottom -- there's a paragraph cited there and**  
18 **toward the bottom it says, "Accordingly,**  
19 **additional amounts shall be paid as bonuses in**  
20 **accordance with Section 9.1(c) and the**  
21 **employees of the PIM business will be treated**  
22 **in a manner consistent with the principles set**  
23 **forth in Section 9.1(c)."**  
24 **Do you see that?**  
25 A. I do see it.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **business that you haven't mentioned already.**  
3 **I believe you've told me quite a bit. But as**  
4 **it relates to the compensation issues embodied**  
5 **in your spreadsheet, Exhibit 281B.**  
6 A. I think we've discussed their  
7 inclusion as part of the general bonus amounts  
8 as labeled on 281B.  
9 **Q. Okay.**  
10 A. We've discussed the replacement  
11 RSU items. You've seen those in the attached  
12 schedule. We've discussed the forgivable  
13 loans issue that was referred to in one of  
14 these other exhibits. 288B believe.  
15 **Q. Right.**  
16 A. I don't recall of anything  
17 material that springs to mind regarding the  
18 PIM business that we haven't discussed. It's  
19 possible but I think we've discussed most of  
20 the material items in respect.  
21 **Q. Fair enough.**  
22 (Deposition Exhibit 292B, document  
23 bearing production numbers 10267306 and  
24 10238222, marked for identification as  
25 of this date.)

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 BY MR. HINE:  
3 Q. Mr. Exall, I'll hand you a copy of  
4 a document marked 292B which has two separate  
5 pages with different Bates stamps. Or  
6 actually different markings on the bottom.  
7 They're not Bates stamps. One is marked  
8 10267306 and the other is marked 10238222.  
9 My question relates to the second  
10 page which is entitled Barclays Offers to Key  
11 Lehman Employees.  
12 Do you see that?  
13 A. Yes.  
14 Q. Have you ever seen --  
15 MR. GREEN: Bill, can I interrupt  
16 for a second? What are these Bates  
17 numbers? Or do you know?  
18 MR. HINE: I don't know.  
19 MR. GREEN: Because they're not  
20 Bates numbers that we've put on this  
21 document.  
22 MR. HINE: Correct. They're not  
23 Bates stamped by your -- by Barclays.  
24 MR. GREEN: All right.  
25 Q. But I just wanted to ask you about

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 before?  
3 MR. GREEN: He said he's never  
4 seen it at all before.  
5 A. I don't recall having seen the  
6 schedule. I would note that it's sent out by  
7 Anthony Collerton from Lehman's e-mail  
8 address. And this was preclose. It's dated  
9 September the 19th.  
10 Q. I understand all that.  
11 A. Yeah.  
12 Q. I just want to confirm that you  
13 don't know whether this was produced by  
14 Barclays or Lehman; is that right?  
15 A. No, I don't. I would point out  
16 that it seems that any questions are directed  
17 to Anthony Collerton in the schedule itself.  
18 Q. Okay. Mr. Exall, I think some of  
19 my colleagues might have some questions for  
20 you but --  
21 MR. WOOD: I don't have any.  
22 MR. HINE: Oh, no. I apologize.  
23 I do have one other document I wanted  
24 ask you about. My colleague has  
25 reminded me of one other document.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 this one page that says Barclay Offers to Key  
3 Lehman Employees. Have you ever seen that  
4 document before?  
5 MR. GREEN: Take your time to look  
6 at it and make sure you have the entire  
7 document in mind before answering the  
8 question.  
9 (Document review.)  
10 A. I did not receive this e-mail.  
11 Q. I understand.  
12 A. I don't recall specifically having  
13 seen this e-mail or the attachment to it.  
14 That said, I recognize a lot of the things on  
15 it but I don't think I necessarily saw this  
16 particular schedule.  
17 Q. Okay. Well, this -- I understand  
18 you're not on the e-mail. My question is does  
19 this document entitled Barclays Offers to Key  
20 Lehman Employees, is that a document that was  
21 produced by Barclays, do you know?  
22 A. I have no idea.  
23 Q. Okay. Do you have -- I take it  
24 you have no knowledge of -- well, strike that.  
25 You've never seen it in this form

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 (Deposition Exhibit 293B, Barclays  
3 PLC Results Announcement 31st December  
4 2008, marked for identification as of  
5 this date.)  
6 BY MR. HINE:  
7 Q. Mr. Exall, I'll hand you a copy of  
8 a document marked 293B which is entitled  
9 Barclays PLC Results Announcement, 31 December  
10 2008. I'm not going to ask you detailed  
11 questions about this document but if you would  
12 like to refer to --  
13 A. No page numbers.  
14 Q. -- the sixth page in.  
15 A. Counting the front?  
16 Q. Yes. Which is the section  
17 entitled Group Finance Directors Review.  
18 Do you see that?  
19 A. Yes.  
20 Q. And you'll see in the first bullet  
21 point it says Gains on acquisition of 2.406 --  
22 I'm sorry. 2,406 million pounds.  
23 Do you see that?  
24 A. I do.  
25 Q. Did you have any role in assisting

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **or helping Barclays prepare its financial**  
3 **statements?**

4 A. These (indicating)?

5 **Q. Yeah.**

6 A. No.

7 **Q. Do you provide compensation**  
8 **related information that would go into the**  
9 **financial statements at all?**

10 A. From time to time, yes, I would.

11 **Q. Okay. Do you have any knowledge**  
12 **of whether the compensation figures that**  
13 **you've given us in your spreadsheet,**  
14 **Exhibit 281B, were used in arriving at this**  
15 **gain on acquisition listed in this financial**  
16 **statement?**

17 A. That is a technical accounting  
18 question that I suggest you refer to Mr.  
19 Romaine in that regard.

20 **Q. So your answer is no, you don't**  
21 **have any knowledge one way or the other?**

22 A. I can -- I don't know the chain of  
23 events by which that schedule may or may not  
24 be embodied within that number.

25 **Q. Okay. That number being the one**

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1 **P. EXALL - HIGHLY CONFIDENTIAL**  
2 **on the financial statement that we just talked**  
3 **about?**

4 A. That is correct. As I said, I'm  
5 not a technical accountant. That was produced  
6 as we've discussed and the reasons why. And I  
7 suggest that if you want to understand more  
8 about what's in that number specifically you  
9 should discuss that with finance.

10 **Q. Okay. Is it fair to say that you**  
11 **provide them accounting information -- I mean,**  
12 **compensation information such as that embodied**  
13 **in Exhibit 281B but they take it from there?**

14 A. Yes.

15 **Q. Okay. So other than providing**  
16 **that general compensation related information**  
17 **you're not involved in the preparation of**  
18 **Barclays' financial statements, correct?**

19 A. I was not specifically involved in  
20 the preparation of the financial statements  
21 with respect to that number. There are other  
22 instances in terms of individual disclosure  
23 that is -- may or may not be required, whereas  
24 as a point of fact I am asked to confirm or to  
25 give a number.

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1 **P. EXALL - HIGHLY CONFIDENTIAL**

2 **Q. Okay.**

3 A. So, yes, I am involved where I'm  
4 required. But in general, no, this is not my  
5 responsibility whatsoever.

6 **Q. Very good. Thank you. Now I**  
7 **think I'm done with my questions.**

8 MR. HINE: You don't have any?

9 MR. WOOD: I don't have any.

10 MR. LAZAR: I don't have any.

11 (Continued on next page to include  
12 jurat.)  
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1 **P. EXALL - HIGHLY CONFIDENTIAL**

2 MR. HINE: I think no one else has  
3 any questions. So, Chris, unless you  
4 have any questions --

5 MR. GREEN: No, I don't have any  
6 questions.

7 MR. HINE: All right. Mr. Exall,  
8 thank you for your time.

9 THE WITNESS: My pleasure.

10 MR. HINE: All right. We're done.

11 (Time Noted: 2:40 p.m.)  
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PAUL EXALL

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2009.



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<p>1 2       C E R T I F I C A T E 3     S T A T E   O F   N E W   Y O R K   ) 4         :   s s . 5     C O U N T Y   O F   N E W   Y O R K   ) 6         I, FRANCIS X. FREDERICK, a Notary 7         Public within and for the State of New 8         York, do hereby certify: 9         That PAUL EXALL, the witness whose 10        deposition is hereinbefore set forth, 11        was duly sworn by me and that such 12        deposition is a true record of the 13        testimony given by the witness. 14        I further certify that I am not 15        related to any of the parties to this 16        action by blood or marriage, and that I 17        am in no way interested in the outcome 18        of this matter. 19        IN WITNESS WHEREOF, I have 20        hereunto set my hand this 27th day of 21        August, 2009. 22 23 24                FRANCIS X. FREDERICK 25</p>	<p>1 2       ----- I N D E X ----- 3     W I T N E S S        E X A M I N A T I O N   B Y       P A G E 4     P A U L   E X A L L       M R .   H I N E                5 5 6 7 8 9       ----- I N F O R M A T I O N   R E Q U E S T S   ----- 10    D I R E C T I O N S :   N O N E 11    R U L I N G S :   N O N E 12    T O   B E   F U R N I S H E D :   N O N E 13    R E Q U E S T S :   7 1 , 1 8 8 , 2 2 8 14    M O T I O N S :   N O N E 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 2       ----- E X H I B I T S ----- 3     E X H I B I T                       F O R   I D . 4     E x h i b i t   2 7 9 B 5     D e b t o r s '   F i r s t   R u l e   3 0 ( b ) ( 6 ) 6     D e p o s i t i o n   N o t i c e   t o   B a r c l a y s 7     o n   I s s u e s   P e r t a i n i n g   t o   A c c r u e d 8     0 8   F Y   L i a b i l i t y   U n d e r   t h e 9     A s s e t   P u r c h a s e   A g r e e m e n t ..... 5 10    E x h i b i t   2 8 0 B 11    d o c u m e n t   b e a r i n g   p r o d u c t i o n 12    n u m b e r   B C I - E X - 0 0 0 7 7 2 8 7 ..... 61 13    E x h i b i t   2 8 1 B 14    d o c u m e n t   b e a r i n g   p r o d u c t i o n 15    n u m b e r   B C I - E X - 0 0 1 1 5 8 4 3 ..... 61 16    E x h i b i t   2 8 2 B 17    d o c u m e n t   b e a r i n g   p r o d u c t i o n 18    n u m b e r s   B C I - E X - 0 0 1 1 3 1 6 1 19    t h r o u g h   B C I - E X - 0 0 1 1 3 1 6 3 ..... 160 20    E x h i b i t   2 8 3 B 21    d o c u m e n t   b e a r i n g   p r o d u c t i o n 22    n u m b e r   B C I - E X - 0 0 1 1 3 1 9 4 ..... 170 23 24 25</p>	<p>1 2       ----- E X H I B I T S ----- 3     E X H I B I T                       F O R   I D . 4     E x h i b i t   2 8 4 B 5     d o c u m e n t   b e a r i n g   p r o d u c t i o n 6     n u m b e r s   B C I - E X - ( S ) 0 0 0 2 7 1 9 0 7     t h r o u g h   B C I - E X - ( S ) 0 0 0 2 7 1 9 7 ..... 172 8     E x h i b i t   2 8 5 B 9     d o c u m e n t   b e a r i n g   p r o d u c t i o n 10    n u m b e r   B C I - E X - 0 0 0 7 7 6 5 1 ..... 199 11    E x h i b i t   2 8 6 B 12    d o c u m e n t   b e a r i n g   p r o d u c t i o n 13    n u m b e r   B C I - E X - 0 0 0 7 7 6 2 1 ..... 199 14    E x h i b i t   2 8 7 B 15    d o c u m e n t   b e a r i n g   p r o d u c t i o n 16    n u m b e r   B C I - E X - 0 0 0 7 7 4 6 6 ..... 199 17    E x h i b i t   2 8 8 B 18    d o c u m e n t   b e a r i n g   p r o d u c t i o n 19    n u m b e r s   B C I - E X - ( S ) - 0 0 0 2 7 2 5 8 20    t h r o u g h   B C I - E X - ( S ) - 0 0 0 2 7 2 6 5 ..... 239 21    E x h i b i t   2 8 9 B 22    d o c u m e n t   b e a r i n g   p r o d u c t i o n 23    n u m b e r   B C I - E X - 0 0 0 7 7 5 5 7 ..... 242 24 25</p>

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<div>1</div> <div>2----- EXHIBITS -----</div> <div>3EXHIBIT FOR ID.</div> <div>4Exhibit 290B</div> <div>5document bearing production</div> <div>6numbers BCI-EX-00077542</div> <div>7through BCI-EX-00077543..... 243</div> <div>8Exhibit 291B</div> <div>9document bearing production</div> <div>10numbers BCI-EX-00078069</div> <div>11through BCI-EX-00078071..... 246</div> <div>12Exhibit 292B</div> <div>13document bearing production</div> <div>14numbers I0267306</div> <div>15and I0238222..... 249</div> <div>16Exhibit 293B</div> <div>17Barclays PLC Results</div> <div>18Announcement 31st December 2008..... 253</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>1</div> <div>2NAME OF CASE: IN RE: LEHMAN BROTHERS</div> <div>3DATE OF DEPOSITION: AUGUST 27, 2009</div> <div>4NAME OF WITNESS: PAUL EXALL</div> <div>5Reason codes:</div> <div>61. To clarify the record.</div> <div>72. To conform to the facts.</div> <div>83. To correct transcription errors.</div> <div>9Page _____ Line _____ Reason _____</div> <div>10From _____ to _____</div> <div>11</div> <div>12Page _____ Line _____ Reason _____</div> <div>13From _____ to _____</div> <div>14</div> <div>15Page _____ Line _____ Reason _____</div> <div>16From _____ to _____</div> <div>17</div> <div>18Page _____ Line _____ Reason _____</div> <div>19From _____ to _____</div> <div>20</div> <div>21Page _____ Line _____ Reason _____</div> <div>22From _____ to _____</div> <div>23</div> <div>24</div> <div>25PAUL EXALL</div>

# BCI EXHIBIT

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al, (Jointly Administered)  
Debtors.

-----x

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF ERIC JONATHAN FELDER  
New York, New York  
July 31, 2009

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 24018

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 July 31, 2009 6 9:35 a.m. 7 8 9 Deposition of ERIC JONATHAN FELDER, 10 held at the offices of Jones Day, LLP, 222 East 11 41st Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25  TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: DAVID L. CARDEN, ESQ. 8 KELLY CARRERO, ESQ. 9 JENNIFER DEL MEDICO, ESQ. 10 11 BOIES, SCHILLER &amp; FLEXNER, LLP 12 Attorneys for Barclays and The Witness 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ. 16 17 DEBEVOISE &amp; PLIMPTON, LLP 18 Attorneys for The Witness 19 919 Third Avenue 20 New York, New York 10022 21 BY: ANDREW J. CERESNEY, ESQ. 22 JULIE SUH, ESQ. 23 24 25  TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 4</p> <p>1 2 APPEARANCES: 3 4 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 5 Attorneys for the Creditors Committee 6 865 Figueroa Street, 10th Floor 7 Los Angeles, California 90017 8 BY: ERICA P. TAGGART, ESQ. 9 10 JENNER &amp; BLOCK, LLC 11 Attorneys for the Examiner 12 330 N. Wabash Avenue 13 Chicago, Illinois 60611-7603 14 BY: ROBERT L. BYMAN, ESQ. 15 16 HUGHES, HUBBARD &amp; REED, LLP 17 Attorneys for the SIPA Trustee 18 One Battery Park Plaza 19 New York, New York 10004-1482 20 BY: WILLIAM R. MAGUIRE, ESQ. 21 NEIL J. OXFORD, ESQ. 22 23 Also Present: 24 Rajesh Ankalkoti, Alvarez &amp; Marsal 25  TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 5</p> <p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 IT IS FURTHER STIPULATED AND AGREED 14 that the within deposition may be sworn to 15 and signed before any officer authorized to 16 administer an oath, with the same force and 17 effect as if signed and sworn to before the 18 Court. 19 20 21 22 23 24 25  TSG Reporting - Worldwide (877) 702-9580</p>

Page 6

1 FELDER - HIGHLY CONFIDENTIAL  
2 ERIC JONATHAN FELDER,  
3 called as a witness by the parties,  
4 having been duly sworn, testified as  
5 follows:  
6 MR. CARDEN: Good morning, Mr. Felder.  
7 My name is David Carden. I represent the  
8 estate of Lehman Brothers, and I think what  
9 we ought to do is go around the table and  
10 have everybody identify who they are before  
11 we begin, and then, Jack, you have a  
12 statement, right?  
13 MR. STERN: Yes.  
14 MR. CARDEN: I already introduced  
15 myself. My colleague, Kelly Carrero and  
16 Jennifer Del Medico.  
17 MR. ANKALKOTI: My name is Rajesh  
18 Ankalkoti. I am with Alvarez & Marsal.  
19 MS. TAGGART: I'm Erica Taggart with  
20 Quinn, Emanuel, Urquhart, Oliver & Hedges,  
21 LLP, for the creditors committee.  
22 MR. MAGUIRE: Bill Maguire and Neil  
23 Oxford from Hughes, Hubbard & Reed for the  
24 trustee.  
25 MR. BYMAN: Robert Byman, Jenner &  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Block, on behalf of the examiner.  
3 MS. SUH: Julie Suh with Debevoise &  
4 Plimpton on behalf of the witness.  
5 MR. CERESNY: Andrew Ceresney from  
6 Debevoise representing Mr. Felder  
7 personally.  
8 MR. STERN: Jack Stern, Boies,  
9 Schiller & Flexner on behalf of Barclays  
10 Capital and Mr. Felder.  
11 Before we begin the questioning, I  
12 just want to state on the record, to avoid  
13 time-consuming discussions of  
14 confidentiality, we have a confidentiality  
15 order in place. What I would like to do is  
16 make a general designation of, anything in  
17 the record that should be treated as highly  
18 confidential or confidential under the terms  
19 of the confidentiality order will be so  
20 designated automatically, and more  
21 specifically, to the extent that there are  
22 questions concerning Mr. Felder's personal  
23 compensation, those are deemed highly  
24 confidential under the confidentiality  
25 order.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 MR. CARDEN: I don't think I have a  
3 problem with that. I am wondering what you  
4 think the mechanism ought to be for those  
5 aspects which are not highly confidential  
6 and confidential, sort of getting out from  
7 underneath that designation?  
8 MR. STERN: I think the best way for  
9 us to deal with that is to address that  
10 after the deposition off the record.  
11 MR. CARDEN: Anybody have any issues  
12 with that?  
13 MR. MAGUIRE: Everything is considered  
14 highly confidential until anybody sees the  
15 need --  
16 MR. CARDEN: I think Jack is concerned  
17 that we don't slow things down. So long as  
18 we have a mechanism that, and we can contest  
19 the highly confidential designations in any  
20 event, so long as we have a designation to  
21 get out from underneath that rubric that is  
22 not cumbersome, and so long as I have your  
23 representation that all this is doing is to  
24 sort of accommodate the speed of the  
25 deposition and we will deal with this in  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 good faith thereafter, I don't have a  
3 serious problem with it.  
4 Does anyone else?  
5 MS. TAGGART: I don't have an  
6 objection, although it would be helpful if  
7 you would, right after the deposition, say  
8 the parts you thought were confidential and  
9 highly confidential, then we can deal with  
10 it elsewhere. It might be good to have that  
11 specific.  
12 MR. STERN: Understood.  
13 MR. CARDEN: Maybe just to give it a  
14 little rigor, unless there is some  
15 particular cause for doing it otherwise,  
16 shall we say sometime within a week you will  
17 have written, having the page numbers of the  
18 depositions and the exhibits and the like,  
19 and designate what you think ought to be  
20 highly confidential and confidential.  
21 Therefore, we have a kind of a program, if  
22 you will.  
23 MR. STERN: I think that is fair, and  
24 I think what Bill said makes sense as a  
25 practical matter; designate the entire  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 transcript as highly confidential, and  
3 within a week, we will dedesignate as  
4 appropriate under the order.  
5 EXAMINATION BY  
6 MR. CARDEN:  
7 Q. Good morning, Mr. Felder.  
8 A. Good moming.  
9 Q. You are currently employed by  
10 Barclays, correct?  
11 A. Correct.  
12 Q. What is your current position, sir?  
13 A. I'm the head of global credit trading.  
14 Q. And how long have you held that  
15 position?  
16 A. Since September '08.  
17 Q. And as head of global trading, just  
18 generally speaking, what are your  
19 responsibilities?  
20 A. Responsible for secondary trading of  
21 cash corporate bonds, credit default swaps, loans,  
22 and the municipal securities business rolls into  
23 credit.  
24 Q. Prior to being employed by Barclays,  
25 you were cohead of fixed income at Lehman  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 fixed income on September 8, 2008, what were your  
3 responsibilities?  
4 A. They were never specifically told to  
5 me.  
6 Q. Did you have an understanding as to  
7 what they were to be?  
8 A. We had -- I had a brief conversation  
9 with Mike Gelband, with Hyung Lee, who is my  
10 cohead, about how the portfolio would be split up  
11 between the two of us in a normal business  
12 environment, and I was going to be responsible  
13 for -- or focus on the credit portion and the  
14 mortgage portion, and then Hyung would focus on FX  
15 and commodities and more focus outside of the U.S.  
16 with my focus in the U.S., because he came from  
17 Asia.  
18 Q. I would like you to tell me what you  
19 consider to have been in the fixed income area at  
20 Lehman Brothers as of the time that you had that  
21 conversation.  
22 A. In fixed income, you would have had  
23 rates, commodities, foreign exchange, credit,  
24 mortgages, emerging markets, and financing would  
25 have been part of fixed income, or it might have  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Brothers, correct?  
3 A. Correct.  
4 Q. Starting on September 9 or thereabouts  
5 of 2008?  
6 A. I believe it was September 8.  
7 Q. I am sorry, I meant that -- that's  
8 exactly what I meant to say actually.  
9 Prior to that, what was your -- what  
10 was your previous title and job?  
11 A. I was global head of global credit  
12 products, since June of '08.  
13 Q. And in that position, what were your  
14 responsibilities?  
15 A. The businesses that rolled up into  
16 global credit products were high-grade, high-yield  
17 CDOs, municipals, and the credit portion of  
18 emerging markets, the corporate credit portion of  
19 emerging markets.  
20 Q. In connection with your  
21 responsibilities as global head of credit  
22 products, did you have any responsibilities of any  
23 kind with regard to repos?  
24 A. No.  
25 Q. And when you took over as head of  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 been a JV with equity. I don't know exactly how  
3 it was set up because you obviously finance more  
4 than just fixed-income product. And commercial  
5 real estate.  
6 Q. I'm just going to read you a list of  
7 asset classes and if you tell me whether you  
8 consider them to have been in the fixed income  
9 area at Lehman as of September 2008. All right?  
10 And I'm just reading now what legends I have been  
11 given, so these might not be completely fulsome.  
12 CDs and other money market  
13 instruments?  
14 A. Yes.  
15 Q. Total -- corporate obligations and  
16 spot?  
17 A. I don't know what that means.  
18 Q. OK. Corporate stocks and options?  
19 A. No.  
20 Q. Derivatives and other -- and it is cut  
21 off so I can't -- it would have been some  
22 derivative products.  
23 A. There would have been some, yeah.  
24 Q. Some. OK.  
25 Governments and agencies would have  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **been a fixed income, correct?**  
3 A. Correct.  
4 **Q. Mortgages and -- any mortgage-backed**  
5 **securities would have been as well, correct?**  
6 A. Correct.  
7 **Q. Now, when you had the conversation**  
8 **concerning how to divide the fixed income**  
9 **portfolio, was it -- it was divided along product**  
10 **lines or asset classes as well as geography?**  
11 A. That was the initial intention. It  
12 was -- nothing was ever put into --  
13 **Q. It never functioned?**  
14 A. Because, you know, that week was  
15 the -- when the firm ultimately went under.  
16 **Q. Let's talk about that week. We are**  
17 **now talking about the week of -- I brought a**  
18 **calendar so we have a, as I said before, a prop.**  
19 **Why don't you avail yourself of it as you wish. I**  
20 **don't see any need to mark it. The dates are what**  
21 **they are from time immemorial to the end of time.**  
22 **You were made the head of fixed income**  
23 **on Monday, the 8th of September, correct?**  
24 A. Correct.  
25 **Q. At some time that week there began to**  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **that -- really from Friday on.**  
3 **Q. Are we talking about Friday the 12th?**  
4 A. Correct.  
5 **Q. So your first conversations concerning**  
6 **any transaction in which the firm was to be sold**  
7 **to B of A or anyone else began on that Friday?**  
8 A. I never had a conversation about a  
9 transaction. It was -- I was told to go to a  
10 legal office and help in providing and gathering  
11 any information that would have been needed for a  
12 due diligence.  
13 **Q. What kind of information were you**  
14 **asked to get?**  
15 A. In most cases, it was to get a product  
16 expert around a specific asset class that either  
17 Barclays or Bank America wanted to discuss. Or  
18 specifically, within -- within credit, where that  
19 business had rolled up in to me, if I had any risk  
20 reports or specific information that was asked.  
21 **Q. Were you asked to provide any**  
22 **valuations or assist in the obtaining of**  
23 **valuations of any asset classes?**  
24 A. No.  
25 **Q. Were any of the people with whom you**  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **be discussions concerning the sale of the entire**  
3 **firm?**  
4 A. Correct.  
5 **Q. Were you involved in any of those**  
6 **conversations?**  
7 A. I was involved in, if people needed  
8 information, I was there to help gather  
9 information that would have been needed.  
10 **Q. OK. Let's talk -- is there any other**  
11 **way in which you were -- strike that.**  
12 **I take it you weren't negotiating for**  
13 **the firm in any respect?**  
14 A. I was not negotiating.  
15 **Q. You were providing a support, support**  
16 **for those who needed information in connection**  
17 **with the negotiations that were ongoing at the**  
18 **time with Bank of America and perhaps others,**  
19 **correct?**  
20 A. Correct.  
21 **Q. Was there anyone in particular that**  
22 **was asking you for information during that week?**  
23 A. There would be a number of people that  
24 would say go get a particular person and send them  
25 to a room or tell -- relay instructions throughout  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **worked to your knowledge asked to provide**  
3 **valuations on any asset classes?**  
4 A. I would be assuming.  
5 **Q. Let's go back to who asked you to help**  
6 **on that Friday. Can you give me any names of**  
7 **people who were involved?**  
8 A. Mike Gelband.  
9 **Q. What was Mike's position at the time?**  
10 A. He was global head of all of debt and  
11 equity. So all -- excuse me, all of fixed income  
12 and equity.  
13 **Q. Did you report to him?**  
14 A. I reported to Mike.  
15 **Q. Anyone else, anyone other than Mike**  
16 **ask you to provide any information on that Friday**  
17 **the 12th?**  
18 A. I believe Ian Lowitt, who was the CFO,  
19 and not specifically information but Bart McDade  
20 would tell people where to go and be ready for  
21 any, you know, any questions or requests. And I'm  
22 sorry, also Alex Kirk.  
23 **Q. I was going to ask you about Alex.**  
24 **What was Alex's position at that time?**  
25 A. I don't know the exact definition of  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 it, but he was brought back by Bart and he was on  
3 the executive committee, and I believe his title  
4 at that time was head of principal investing.  
5 He -- but he had been the prior co-COO of fixed  
6 income, and so it -- he had a -- he had an  
7 institutional knowledge of a broad array of the  
8 asset classes within fixed income.

9 Q. And you said that Bart brought him  
10 back. Did he bring him back from outside the  
11 firm?

12 A. He had left the firm in early '08.

13 Q. When did Bart bring him back?

14 A. I believe it was June. At the same  
15 time he brought Mike Gelband back. They came back  
16 together.

17 Q. Do you have any recollection as to any  
18 specific information that either Mike or Ian,  
19 Bart, Alex asked you to provide? I'm talking  
20 about documentary information as opposed to simply  
21 going to some room at some point.

22 A. It was generally around position -- it  
23 was around the business heads bringing position  
24 sheets or risk reports.

25 Q. So at some time on the 12th, do you  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 have a recollection of having been asked to  
3 provide the position sheets for some particular  
4 area in the fixed income department?

5 A. On Friday, I don't remember the law  
6 firm, but I was with the Bank America people and  
7 they asked to look at credit positions. They  
8 didn't seem focused on any of the investment grade  
9 securities. They wanted to look at the leveraged  
10 loans.

11 So I had Jim Seery, who ran leveraged  
12 loans, come to the law offices and then proceed  
13 with those conversations.

14 Q. Do you have a recollection of having  
15 provided any printouts of positions in the fixed  
16 income area to B of A? Not personally but I mean  
17 in connection with the work you were doing on  
18 behalf of the firm?

19 A. There were definitely risk reports in  
20 these meetings. I don't know if they were turned  
21 over to Bank America or reviewed there and then  
22 kept.

23 Q. What are you calling a risk report?  
24 Are they position reports, the positions that the  
25 firm had, long and short positions?

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1 FELDER - HIGHLY CONFIDENTIAL

2 A. It depends on the asset class, how the  
3 risk reports are, are set up. I'm only  
4 knowledgeable really about the credit-specific  
5 risk reports. But they generally give a broad  
6 overview and will list top positions as opposed to  
7 a very detailed line-by-line summary of the  
8 business.

9 Q. When you say top positions, are you  
10 talking about, say, the top 100 positions that the  
11 firm is maintaining? Or how are you  
12 characterizing that?

13 A. Within a business -- the individual  
14 risk manager would set it up however they reviewed  
15 the risk themselves. So it might be the top 20  
16 longs and the top 20 shorts, or it might be the  
17 top jump to default positions or the top current  
18 positions, depending on how you would look at the  
19 risk. There would be different buckets.

20 Q. How are the valuations on the  
21 positions in such reports established by the firm  
22 or how were they established?

23 A. Traders mark their positions each day.

24 Q. You didn't have any responsibility for  
25 valuations, I take it?

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1 FELDER - HIGHLY CONFIDENTIAL

2 A. The traders within the business that I  
3 run had to mark their positions.

4 Q. But you didn't do it personally?

5 A. I did not mark positions.

6 Q. But you were overseeing those who were  
7 marking positions to establish valuations for the  
8 positions in the area where you had  
9 responsibility, correct?

10 A. I was overseeing desk heads who were  
11 overseeing the traders who were marking.

12 Q. Now, I have seen a phrase used about a  
13 dirty valuation. What's a dirty valuation? Does  
14 that phrase mean anything to you?

15 A. Dirty price means something to me, not  
16 dirty valuation.

17 Q. OK, dirty price?

18 A. That would be a security without  
19 accrued interest.

20 Q. Did you ever have occasion during the  
21 time that Lehman was speaking to B of A to look at  
22 any of the valuations for the positions within  
23 your area of responsibility?

24 MR. CERESNY: To clarify, when you say  
25 valuations, you mean marks?

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1 FELDER - HIGHLY CONFIDENTIAL  
2 THE WITNESS: Yes.  
3 (Record read)  
4 A. I saw -- I could see the marks on  
5 positions within credit.  
6 Q. When you say the positions within  
7 credit, would you amplify upon that for me? What  
8 do you mean by that?  
9 A. Cash corporate bonds, credit default  
10 swaps.  
11 Q. Treasuries?  
12 A. Treasuries are in -- would be used as  
13 a hedge within the credit space, and any marks on  
14 Treasuries would be automatically fed from the  
15 Treasury group that marked them.  
16 Q. But at Lehman, Treasuries were not  
17 within fixed income?  
18 A. They were within fixed income.  
19 Q. In the credit area of fixed income?  
20 A. Correct. They were in the interest  
21 rate business.  
22 Q. You said you were having a meeting or  
23 had a meeting with B of A on the Friday. Was  
24 this -- let's talk a little bit about your  
25 meetings with B of A. Did you have more than one?  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 information people would have needed.  
3 Q. Do you recall with whom at Barclays  
4 you were meeting?  
5 A. It was Jerry Del Missier, Eric  
6 Bommensath, and I believe Mike Keegan.  
7 Q. Did you have meetings with any B of A  
8 people on Sunday? Pardon me, I apologize. Did  
9 you have any meetings with any Barclays people on  
10 Sunday?  
11 A. I don't believe so.  
12 Q. So your meeting with Del Missier,  
13 Bommen -- how do you say his name?  
14 A. Bommensath.  
15 Q. And Keegan on Saturday, at a law firm?  
16 A. Yes.  
17 Q. Did you or someone underneath your  
18 area of responsibility provide any position lists  
19 of any kind to the Barclays people?  
20 A. I would assume so.  
21 Q. But you don't recall?  
22 A. They -- there were risk reports again  
23 that were -- that were at the meetings.  
24 Q. OK, let's -- I want to get to the week  
25 of the 15th, and before we step off on Monday  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. I was there throughout the day. And  
3 there were -- there were different meetings  
4 throughout the day.  
5 Q. What was your role in those meetings?  
6 A. I was gathering information for, as I  
7 mentioned earlier, for example, when they wanted  
8 to talk about leveraged loans, I would go get Jim  
9 Seery. I gave a brief overview of our credit  
10 business.  
11 And then away from that, I was really  
12 facilitating getting the right people to the  
13 location in order to have -- for them to have the  
14 more detailed conversations by asset class.  
15 Q. And did your meetings with B of A  
16 continue through the weekend or was it only on the  
17 Friday?  
18 A. It was just Friday.  
19 Q. Did you have any meetings of any kind  
20 with regard to the sale of the firm on the weekend  
21 of the 13th and 14th of September?  
22 A. I had similar -- I went to a different  
23 law firm on Saturday where the Barclays team was  
24 and had a similar function, where I was there to  
25 try to facilitate anything that people would --  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 morning, did you have any other meetings of any  
3 kind with anybody at Lehman or Barclays or B of A  
4 on that weekend in a -- that you haven't spoken  
5 about just generally now?  
6 A. Just at the law firm on Friday and  
7 Saturday.  
8 Q. Let's start Monday morning. You  
9 arrive at the office on Monday morning, and tell  
10 me -- you know, I want to get -- I am going to let  
11 you do something I don't like to do. I would like  
12 a narrative of what you ended up doing that week,  
13 so it will maybe short focus our questions and  
14 maybe shorten this up a little bit.  
15 Why don't you tell me what happened  
16 Monday morning when you got into the office, and  
17 we will start off.  
18 A. It was -- I got to -- I got to the  
19 office Monday morning. I believe I went to Mike  
20 Gelband to ask for instructions as to what I was  
21 supposed to be doing, what I was supposed to be  
22 directing people to be doing, given the firm had  
23 filed for bankruptcy. I was trying to keep people  
24 calm and be supportive, you know, and obviously in  
25 a tough time.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 And then at some point in the middle  
3 of the day, I was told to go up to the 32nd floor  
4 because there was a chance that Barclays would --  
5 there might be a way for Barclays to buy just the  
6 broker dealer of Lehman Brothers, and serve a  
7 similar function as I previously described, to be  
8 there for any information or to be a -- you know,  
9 to help bring people that people -- that people  
10 would have needed to speak to.

11 So I was up there waiting for -- just  
12 waiting for a long time, and bringing people in as  
13 people were needed. So there were a lot of people  
14 in different rooms having meetings, and at  
15 different points I would have been asked to go get  
16 someone or tell someone to come up.

17 Q. I want to try to break that down as  
18 much as I can. I know it is difficult to do, but  
19 I know there are a lot of people meeting in a lot  
20 of different rooms.

21 Were you reporting most immediately to  
22 Mike Gelband during that day?

23 A. It -- he is who I was trying to get  
24 direction from, but at different points, Bart  
25 would walk out and say, go get someone or send  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 that folks from Barclays would have. So I  
3 would -- I remember Charlie Spero, for example,  
4 who ran mortgages, at one point I was asked to  
5 have Charlie come up to the floor and I sent him  
6 into that room.

7 Q. Were you ever in the room yourself?

8 A. I generally didn't stay if it wasn't  
9 an asset class or something I could add any value,  
10 because I wanted to make sure that I was available  
11 if people needed me to get other stuff, other  
12 things.

13 So for Charlie, I remember I was there  
14 at the very beginning and then left.

15 Kaushik Amin also was called up, who  
16 ran our rates and FX businesses, and commodities,  
17 actually. So I sent an e-mail to him and said,  
18 you should come up, and he came up.

19 And then for credit specifically, I  
20 would have -- I was there.

21 Q. You were staying in the room?

22 A. Yes.

23 Q. And presenting information and  
24 providing --

25 A. Answering questions that people had.

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1 FELDER - HIGHLY CONFIDENTIAL  
2 someone up here, or Ian Lowitt would say, go get  
3 someone and send someone up here, or Alex. That  
4 group would -- it wasn't an organized way to  
5 communicate, so --

6 Q. Let's try it this way. I take it Bart  
7 for the most part was in one room for most of the  
8 day, so far as you know?

9 A. I actually don't know.

10 Q. Was there one main area, one main  
11 conference room where people were congregating  
12 as -- I'll call it a center?

13 A. It seemed to me to be split up by  
14 different -- I don't know what they -- what the  
15 different -- it seemed to be split up. There  
16 were -- it was a bunch of different rooms. I do  
17 remember that HR people went to one room, and I  
18 was in -- I was sending -- I was sending people to  
19 one room in particular. I don't remember what the  
20 number of it was.

21 Q. OK. Do you know who generally was in  
22 that room and why you were sending people to that  
23 room, what was going on in there?

24 A. It would be a -- asset class by asset  
25 class, people discussing or answering questions  
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1 FELDER - HIGHLY CONFIDENTIAL

2 Q. Who else was in the room when you were  
3 doing that, to your recollection?

4 A. Mike Keegan. Then I believe there  
5 were a bunch of the product control type people.

6 Q. Who were the product control people?

7 A. Like the middle office folks. So they  
8 were coming and going. So I think, I believe I  
9 saw Gilles Aublin up there. He was in product  
10 control. Then there were a lot of people I didn't  
11 know from Barclays.

12 Q. Right. Do you recall anybody else  
13 from Lehman that was in the room when you were  
14 making those presentations or answering questions?

15 A. No.

16 Q. Where was Mike Gelband during that  
17 time period, if you remember?

18 A. I don't know. I would see him walking  
19 in the hall. He was definitely up there at  
20 different points, but I don't know.

21 Q. Did you ever make a presentation of  
22 any kind or provide any information to anyone  
23 other than in that room, you personally, on the  
24 Monday, the 15th?

25 A. No.

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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. And did you ever direct anyone with  
3 regard to any of the asset classes that you  
4 mentioned to any room other than the room you have  
5 just described on the Monday?

6 A. On the Monday? I don't know if they  
7 ended up in other rooms. I would say, come up to  
8 the 32nd floor, and then there were just so many  
9 people going around that it's possible that  
10 someone ended up in a different room than that  
11 room.

12 Q. I understand. I am asking if you  
13 recall having directed anybody else to a different  
14 room that day.

15 A. No, I don't.

16 Q. How long were you at the firm on that  
17 Monday, the 15th?

18 A. I was there until I believe, I believe  
19 5 or 6 o'clock. It might have been a little bit  
20 later. Everyone was -- there were still a lot of  
21 people there, and the requests for me to do things  
22 had stopped, so I was just sort of waiting up  
23 there. So I went -- so I left.

24 Q. You went home?

25 A. I might have gone and grabbed a drink  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 and then gone home.

3 Q. I understand. But did you come back  
4 to the office that day?

5 A. No.

6 Q. The next time you came to the office  
7 was when?

8 A. Was Tuesday.

9 Q. First thing in the morning?

10 A. I believe Tuesday was the day that I  
11 met with Jerry Del Missier and Bob Diamond about  
12 my role specifically, and I don't recall if I went  
13 directly to the Barclays building at 200 Park or  
14 to the old Lehman -- I don't recall which I went  
15 to first.

16 Q. When you say your role, you are  
17 talking about your role to be at Barclays, if  
18 Barclays purchased --

19 A. If there was -- yes.

20 Q. If there was a transaction?

21 A. Correct.

22 Q. Let's hold on that for just a moment.  
23 That was on the Tuesday, you believe?

24 A. I believe it was on the Tuesday.

25 Q. So it would have been Tuesday, the  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 16th, correct?

3 A. Correct.

4 Q. Did you have any conversations with  
5 anybody at Lehman Brothers or Barclays the evening  
6 of Monday on the telephone?

7 A. Bart called me and told me that Bob  
8 and Jerry would be reaching out to me over the  
9 next day to set up a meeting and I should be  
10 expecting that.

11 Q. Were there any other calls from anyone  
12 at Lehman Brothers or Barclays on the evening of  
13 Monday, September 15?

14 A. I believe I spoke to Tom Humphrey.

15 Q. You called Tom or he called you?

16 A. I don't recall.

17 Q. Now, Tom Humphrey was one of the  
18 people who worked underneath you in the fixed  
19 income area, correct?

20 A. No. He was the global head of fixed  
21 income sales.

22 Q. That was not within your area of  
23 responsibility as cohead of global -- pardon me,  
24 of global fixed income?

25 A. That wasn't -- at different points,

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1 FELDER - HIGHLY CONFIDENTIAL  
2 the global head of fixed income sales either  
3 reported to the head of fixed income or didn't.  
4 Sometimes it was separate up into Steve Lessing,  
5 who ran all distribution.

6 So I had never -- I wasn't -- I had  
7 never been told specifically whether Tom reported  
8 to me or not.

9 Q. All right, fine.

10 Did -- I am sorry, maybe you said  
11 this. Did you call Tom or did he call you?

12 A. I don't recall.

13 Q. Do you remember what you spoke to Tom  
14 about?

15 A. I asked him how is it going -- he was  
16 still there.

17 Q. Still at the firm?

18 A. Still physically at 745 Seventh. So I  
19 was trying throughout the night -- I don't think I  
20 went to sleep. I was trying to find out are  
21 things -- how are things going. And he -- I  
22 remember he gave me an update, and he said it  
23 seems like things were going OK.

24 Q. You were checking in with him to check  
25 the status of what was happening?

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 A. Yes.  
3 Q. When you left the office on Monday,  
4 was it your understanding that Barclays was going  
5 to purchase the broker dealer or was going to  
6 purchase certain assets of Lehman Brothers?  
7 A. All I --  
8 MR. STERN: Objection to the form.  
9 Q. Go ahead.  
10 A. What does that mean?  
11 MR. STERN: It means --  
12 Q. It means I didn't ask a particularly  
13 good question on this particular question, but it  
14 is good enough for the present purposes.  
15 MR. STERN: Let's hear the question  
16 again.  
17 (Record read).  
18 MR. CARDEN: I would say Lehman  
19 Brothers, the assets -- pardon me, the  
20 broker dealer is not an asset of Lehman  
21 Brothers, so I think the question is fine,  
22 but I will rephrase it if you really want me  
23 to.  
24 MR. STERN: Yeah.  
25 Q. When you left on Monday, was it your  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 specific assets, meaning positions, asset classes  
3 and the like of Lehman Brothers?  
4 A. I had always heard it was the broker  
5 dealer.  
6 Q. When did you first learn that it  
7 wasn't the broker dealer that Barclays had  
8 purchased?  
9 A. I actually thought they did purchase  
10 the broker dealer.  
11 Q. To this day?  
12 A. Yes.  
13 Q. OK.  
14 A. Is that not --  
15 MR. STERN: There is a distinction  
16 between the assets of the broker dealer and  
17 the stock of LBI, so --  
18 MR. CARDEN: OK.  
19 MR. STERN: That's I think where the  
20 confusion lies. There really shouldn't be  
21 any confusion. Not that you shouldn't be  
22 confused, but rather there shouldn't be any  
23 confusion on the record because the  
24 agreement is a matter of public record.  
25 Q. Let's goes to Tuesday when you're  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 understanding that the negotiations were still to  
3 purchase the entire broker dealer or purchase some  
4 specific positions or other assets of Lehman  
5 Brothers?  
6 A. I didn't have specific knowledge.  
7 Q. Did you have any general knowledge at  
8 all? Had you heard anything?  
9 A. All I had heard during the day was  
10 that there was the possibility that Barclays could  
11 buy the broker dealer.  
12 Q. When you left on Monday, so far as you  
13 knew, that was the conversation that was taking  
14 place, it was the purchase of the broker dealer?  
15 MR. STERN: Objection to the form.  
16 A. I didn't have any new -- I didn't have  
17 any new specifics of the details.  
18 Q. OK. Now, on Tuesday, did there come a  
19 time when you understood that Barclays was  
20 considering purchasing something less than the  
21 entire broker dealer of Lehman Brothers?  
22 A. No.  
23 Q. Did there ever come a time during the  
24 week of September 15 when you understood that  
25 Barclays was going to be purchasing certain  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 having your conversation with Mr. Diamond and  
3 Mr. Del Missier, right? That was at Barclays?  
4 A. Correct.  
5 Q. Was anyone else present other than the  
6 three of you?  
7 A. I believe Michael Evans was there.  
8 Q. Who is Michael Evans?  
9 A. He runs human resources for Barclays.  
10 But I'm not positive.  
11 Q. Do you recall whether that was the  
12 morning of the 16th?  
13 A. I believe it was the morning.  
14 Q. You can't recall whether you went  
15 straight there or whether you went to the office  
16 of Lehman Brothers first?  
17 A. Correct.  
18 Q. How long did you meet with Mr. Diamond  
19 and Mr. Del Missier?  
20 A. It was probably about 45 minutes.  
21 Q. Do you know if anyone else at Lehman  
22 Brothers was meeting with them as well?  
23 A. I don't.  
24 Q. Did you see any Lehman Brothers people  
25 waiting to meet with them?  
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1 FELDER - HIGHLY CONFIDENTIAL

2 A. No. But I do know that other Lehman  
3 people met with them the night before.

4 Q. Do you know who met with them the  
5 night before?

6 A. I believe Tom Humphrey sent me, I  
7 believe, an e-mail saying that he had met with  
8 them. But away from that, I didn't know anyone  
9 specifically.

10 Q. Did you ever learn that other people  
11 at Lehman Brothers had met with Mr. Diamond at  
12 some point on the Monday or the Tuesday?

13 A. Jerry Donini told me that he met with  
14 them. I don't recall when.

15 Q. Tell me as best you can what  
16 Mr. Diamond and Mr. Del Missier said to you and  
17 what you said to them in that meeting on the  
18 morning of September 16.

19 A. They said that they would like for me  
20 to join the firm running the credit business.  
21 Then we got into specifics of what that actually  
22 meant. And so it was -- they spoke about that it  
23 is credit trading, just high grade, high yield.  
24 We were comparing it to my function at Lehman. So  
25 not CDOs, not emerging markets.

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2 me [REDACTED] for '08 compensation, split in cash  
3 and equity.

4 In Lehman, I had that in cash, so I  
5 said, you know, I said if it is doable all in  
6 cash, that that would be closer to keeping me in  
7 the same spot than not.

8 They had to check if that was doable,  
9 so there were a few days then after that before  
10 anything -- before I got anything back that  
11 indicated that -- but they said they would work to  
12 see if that made sense. They wanted to see the  
13 Lehman documents, as well.

14 Q. Meaning Lehman documents related to  
15 your compensation --

16 A. Yes.

17 Q. -- or the --

18 A. No, Lehman documents related to the  
19 compensation.

20 I told them -- I had gotten the Lehman  
21 money, I already had the cash. I told them I  
22 intended to give that money back to Lehman as  
23 well. And so if there was a way to have the  
24 Barclays money given to me earlier than the  
25 February date, which was the standard date, that

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2 They explained the structure of the  
3 firm, how sales trading and research all roll up  
4 in separate verticals as opposed to having the  
5 whole business, and that I would be running the  
6 trading portion of the credit business.

7 We spoke about that for a while,  
8 because I thought that was a major structural  
9 difference, so we spoke about that for a while.

10 Then we spoke about what compensation  
11 they would be willing to offer me.

12 Q. What did they tell you about  
13 compensation?

14 A. They said they -- I had -- I had  
15 contracts from Lehman, and so they said that they  
16 were -- you know, they wanted to do what they  
17 could do to have me in as close to the same spot  
18 that I would have been in if I had stayed at  
19 Lehman and Lehman didn't go bankrupt to join  
20 Barclays.

21 Q. Did they give you a specific number,  
22 what that meant?

23 A. The specific numbers within -- for my  
24 '08 compensation for Lehman, the cash component  
25 was [REDACTED] And so they said they would give

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1 FELDER - HIGHLY CONFIDENTIAL

2 that would be preferable. So they had to -- they  
3 checked on that.

4 And then we spoke about making sure  
5 that -- I said, look, I want this to be fair and  
6 us to have -- start to be a very good working  
7 relationship, so whatever we need to put in the  
8 contract so, you know, I am really going to be  
9 here and stay. I don't want to get this cash from  
10 you and then have the ability to leave.

11 So we wrote into the document that I  
12 had to stay until March of '09, otherwise I would  
13 have had to give that money back. And then --

14 Q. Give the '08 money back?

15 A. Yes.

16 And then -- I am trying to think if  
17 there are any other things. And then I wanted to  
18 make sure that most importantly, that I was going  
19 to be able to bring -- that the people in the  
20 credit business at Lehman, I was going to be able  
21 to make sure that they had jobs and that they were  
22 coming also, so we could keep the whole business  
23 together, and that I would have some ability to  
24 decide who of the people would have -- would be in  
25 each seat. So that I was actually empowered in

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1 FELDER - HIGHLY CONFIDENTIAL  
2 the business, so that we spoke about that.  
3 Q. And did they speak in that meeting on  
4 the Monday -- pardon me, the Tuesday morning,  
5 about '09 compensation?  
6 A. I had '09 guaranteed for Lehman. That  
7 wasn't the way the Barclays deals were set up from  
8 what I was told. So it was for '08 and then  
9 for -- for a portion of the people, I don't know  
10 the number, there were retention payments that  
11 were one year from your start date and then two  
12 years from your start date, and so I was eligible  
13 for the retention payments, the two retention  
14 payments.  
15 And that, I believe, was a set  
16 percentage of 25 percent of the '08 number. I  
17 believe that was the number. But there was no  
18 guaranteed -- no guaranteed '09 compensation.  
19 Q. Other than a retention?  
20 A. Other than a retention.  
21 Q. And were there -- strike that.  
22 When they finally got back to you on  
23 your request to have it all paid in cash, was the  
24 answer that yes, they would pay it all in cash?  
25 A. Yes.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 heard that a specific pool of money had been set  
3 aside for the purposes of bringing people over  
4 from Lehman to Barclays?  
5 A. Only when I read it in the New York  
6 Post.  
7 Q. All right. So you have your meeting  
8 with Diamond and Del Missier on Tuesday morning,  
9 and following that meeting, you went back to  
10 Lehman, I take it?  
11 A. Yes.  
12 Q. And I would like you to describe for  
13 me your day, if you will, in general terms, and  
14 then we will come back as to what you were doing  
15 on Tuesday, the 16th.  
16 A. Really for the rest of that week, it  
17 was just trying to keep the people together.  
18 People were out interviewing, people were getting  
19 job offers from other firms. There was a lot of  
20 uncertainty.  
21 And I was also trying to relay any  
22 instructions that were given around what people  
23 sitting in the seats should be doing and that  
24 was -- that was the rest -- pretty much the rest  
25 of the week.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. And was the answer also that they  
3 would pay it earlier than February?  
4 A. Yes.  
5 Q. And when did they pay it?  
6 A. The date I believe was -- set in the  
7 contract was October 31st. I don't recall the  
8 exact date that the payment occurred.  
9 Q. And no portion of your '08 income then  
10 was equity or stock in Barclays. It was all cash?  
11 A. Correct.  
12 Q. Now, when you spoke to them about  
13 bringing the people in your area over, did you ask  
14 whether or not there would be bonuses or payments  
15 available for them as well?  
16 A. Yeah. There was the assumption that  
17 people were going to get compensated for -- that  
18 people were going to have employment contracts  
19 with Barclays.  
20 Q. And when you say there was an  
21 assumption, what was that based on in your mind?  
22 A. That people wouldn't -- you wouldn't  
23 get the people if you didn't compensate them.  
24 People wouldn't have come for nothing.  
25 Q. Did there ever come a time when you  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Did you ever see a copy of the asset  
3 purchase agreement that was entered into between  
4 Lehman and Barclays on Tuesday, the 16th?  
5 A. I believe -- there was some document  
6 that was made public. I don't remember what day,  
7 whether it was Tuesday or Wednesday or Thursday.  
8 And I do remember it had -- it was -- it was up on  
9 the Web, and I remember it had like hand-scribbled  
10 notes all over it on the Web. That got e-mailed  
11 around everywhere. I don't know if that is that  
12 document, but there was some document that --  
13 Q. Did you read it?  
14 A. That I -- I -- I glanced through it.  
15 I didn't specifically --  
16 Q. Do you recall anything about it?  
17 A. I recall that there was -- there was a  
18 connotation of specific numbers of people that had  
19 to come to Barclays as part of the arrangement, or  
20 part of whatever the deal was.  
21 Q. Did you ever see the master repurchase  
22 agreement between Lehman and Barclays?  
23 A. No.  
24 Q. Did you ever know there was one?  
25 A. No.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Just so we are not in terrible doubt,  
3 we will find out whether it was the APA you looked  
4 at.  
5 A. OK.  
6 Q. You don't know anything else about the  
7 document that you saw online that had all the  
8 handwriting on it that would help me determine  
9 what it was you might have seen?  
10 A. I remember it got sent to me, because  
11 this concept of eight people, like they started  
12 calling it the elite eight, whatever document that  
13 was in was getting sent around at the firm. So  
14 that, whatever that document was --  
15 Q. That's the document?  
16 A. That would have been the one.  
17 Q. And you were one of the elite eight,  
18 correct?  
19 A. I wasn't aware that I was.  
20 Q. The document didn't identify the  
21 eight?  
22 A. I was never told that I --  
23 Q. No, but when you read the document,  
24 was your name in it?  
25 A. No, I didn't see my name.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Have you ever seen this document  
3 before, Mr. Felder?  
4 A. No, not -- the document I saw had hand  
5 notes on it. So this --  
6 Q. This clearly was not the document that  
7 was the elite eight, I appreciate that. The  
8 question is not whether this is that document, the  
9 question is, have you ever seen this one before?  
10 A. This document, no.  
11 Q. OK. I would like to direct your  
12 attention to page 6, and subparagraph D at the end  
13 there, do you see the reference to government  
14 securities approximating 70 billion?  
15 A. Yes.  
16 Q. Do you ever recall having heard from  
17 anybody that Barclays was going to purchase  
18 approximately 70 billion in government securities  
19 from Lehman Brothers?  
20 MR. STERN: Objection to the form.  
21 Q. That's commercial paper, corporate  
22 debt. I'm just talking about --  
23 MR. STERN: What it says in section D.  
24 Q. Whatever it says in section D. I will  
25 rephrase that.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 (Exhibit 1, asset purchase agreement  
3 dated September 16, 2008 marked for  
4 identification, as of this date.)  
5 MR. CARDEN: I think what -- who knows  
6 how we will end up with this, but we will  
7 make this Felder Exhibit 1. I think we will  
8 end up with depositions being taken  
9 simultaneously at some point later in the  
10 schedule, which will make it awkward if we  
11 do it any other way.  
12 MR. STERN: What we had proposed, to  
13 avoid duplicate exhibits, we have a system  
14 of numerical numbering sequential, and when  
15 we have multiple depositions, we just say  
16 this deposition will take from 200 to 300.  
17 MR. CARDEN: That's fine.  
18 MR. STERN: This is the first  
19 deposition. Why don't we start out that way  
20 and see how it works.  
21 MR. CARDEN: OK. So what we will do  
22 is, 1 through 25, if we get that far, will  
23 be Mr. Felder. OK, that's fine by me.  
24 So it is Exhibit 1. Not Felder 1,  
25 just Exhibit 1.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Did you ever hear from anyone that  
3 Barclays was going to purchase those types of  
4 securities identified in subparagraph D which  
5 approximated \$70 billion?  
6 A. No. I heard they were going to  
7 purchase the broker dealer, which I assumed had  
8 assets. I didn't know the exact numbers.  
9 Q. You never heard a number 70 billion?  
10 A. I don't recall.  
11 Q. For that matter, you never heard a  
12 number 72 billion?  
13 A. I don't know.  
14 Q. Did you ever hear at any time a  
15 specific number of the value given to the assets  
16 that were purchased by Barclays from Lehman  
17 Brothers?  
18 A. After the fact -- after everything, I  
19 do recall Eric Bommensath, people throwing around  
20 the number 50 billion afterwards.  
21 Q. So this is after the transaction  
22 closed, Mr. -- I am having trouble with the name?  
23 A. Bommensath.  
24 Q. Bommensath.  
25 A. I do recall him throwing out the  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 number 50 billion.  
3 Q. 50 billion of assets had been  
4 purchased by Barclays?  
5 A. I recall that.  
6 Q. Did he say that to you personally?  
7 A. I was -- I don't know if it was just  
8 me and him or whether it was a group. I remember,  
9 I remember him saying we have 50 billion worth of  
10 assets.  
11 Q. And do you remember when he told you  
12 that?  
13 A. It was already over at 200 Park. It  
14 was probably in October.  
15 Q. Do you remember what occasioned him to  
16 have this conversation with you? Were you talking  
17 about the transaction?  
18 A. We were going through, we were going  
19 through the, you know, set -- he wanted to set up  
20 a series of reports to keep track of -- that the  
21 sales force was working on selling, once the firms  
22 were together, and I asked the question is there  
23 anything that, is there anything that now that we  
24 are up and running, that the sales force should be  
25 working on, and those -- he said, well, that, that  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Do you know who is head of that group  
3 at Barclays?  
4 A. It is either Stephen King or I believe  
5 at the time it was David Martin. It was one --  
6 David Martin is no longer with the firm. It is  
7 one of those two people, and it might roll up into  
8 John Mann now. I don't know the exact setup.  
9 Q. Do you have an understanding of what  
10 that group at Barclays does?  
11 A. Not with precision. I know that they  
12 have assets and that they -- and that they trade  
13 in the securities.  
14 Q. Am I right in understanding what you  
15 are saying is that that group deals with  
16 proprietary positions at Barclays?  
17 A. I don't know if it was proprietary. I  
18 have only heard the word "principal."  
19 Q. So you don't have an understanding of  
20 whether that's a category of investments, or  
21 pardon me, a category of assets that are  
22 considered proprietary assets to Barclays?  
23 A. I don't know how they categorize it.  
24 Q. Before that conversation with  
25 Mr. Del Missier in which he said there had been  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 50 billion is off in a different -- the 50 billion  
3 is off in a different group basically.  
4 Q. So the 50 billion in assets that had  
5 been purchased by Barclays were not in your  
6 group --  
7 A. Right, exactly.  
8 Q. -- for the purposes of the sale?  
9 A. Exactly.  
10 MR. STERN: Let him finish the  
11 question.  
12 Can I hear the question?  
13 (Record read)  
14 MR. STERN: Objection to the form.  
15 You can answer.  
16 A. They weren't in, they weren't in the  
17 credit business that I was going to be responsible  
18 for.  
19 Q. Did he tell you where they were?  
20 A. It was in a group called P -- PMTG.  
21 Q. Do you know who -- do you know what  
22 that group is, what it does?  
23 A. I believe it is -- I believe PMTG  
24 stands for principal mortgage -- I don't know the  
25 last two letters. So it was principal positions.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 \$50 billion dollars assets --  
3 MR. STERN: Objection, objection.  
4 A. Mr. Bommensath.  
5 Q. I'm sorry, Mr. Bommensath.  
6 MR. STERN: Objection to the form.  
7 Q. Before the conversation with  
8 Bommensath in which he told you there had been  
9 \$50 billion of assets purchased by Barclays, did  
10 you have any conversations with anyone in which  
11 the value of the assets purchased by Barclays was  
12 discussed?  
13 A. No, just those -- the meetings that I  
14 had mentioned over the weekend.  
15 Q. Let's make this Exhibit 2.  
16 (Exhibit 2, e-mail with attachment  
17 dated September 18, 2008 marked for  
18 identification, as of this date.)  
19 Q. Have you ever seen Exhibit 2 before,  
20 Mr. Felder? Let me rephrase.  
21 Have you ever seen any part of  
22 Exhibit 2 before, if you haven't seen the whole?  
23 A. No, I don't recall seeing this.  
24 Q. Have you ever seen a document like  
25 page 2? This chart, summary chart?  
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**FELDER - HIGHLY CONFIDENTIAL**

A. I would have summary risk reports for my business -- for the businesses. But it was credit. We hadn't gotten to the point in fixed income where -- because it was only four days.

**Q. Which of the areas identified on page 2, if you could tell me, were the areas for which you had responsibility, which asset classes?**

A. At what -- when?

**Q. The week of September 15, or the last days of the week before, if you weren't really doing anything the 15th. Let me say it another way.**

**Which of these asset classes were, given your understanding of what position you were to have starting on September 8, would have been within your areas of responsibility?**

A. Total CDs and nonmoney market.

**Q. OK.**

A. I don't know what the second term means with "spot." If it is just corporate bonds, then it would, but I don't know what the term "spot" --

**Q. Are you talking about total corp. obligations and spot, that category?**

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**FELDER - HIGHLY CONFIDENTIAL**

A. Yeah. If it is corporate credit risk and bonds, then it would. But I don't know what corporate obligations -- I don't know what that phrase means.

**Q. OK.**

A. A portion of derivatives, if it was within fixed income.

**Q. OK.**

A. And this would have been in my role as cohead of fixed income if I had been told what I would have been responsible for. Governments and agencies and mortgages and mortgage backs.

**Q. Do you ever remember participating in any effort to create a balance sheet for just LBI itself?**

A. No.

**Q. And did you ever do any kind of calculations to determine the value, the marks of the positions if you will, that were within your area of responsibility?**

A. No.

**Q. And do you know if there at page 2 of this exhibit is, in fact, an effort to do just that as to certain aspects of the portfolio?**

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A. I don't know.

**Q. Do you recognize the spreadsheets that follow page 2 as being listings of the investments or the securities within the various asset classes and the summary page 2?**

MR. STERN: Objection to the form.

A. It looks like a list of securities to me.

**Q. And the valuations that are provided would have been provided by the various traders on the desks in question, correct, whoever was trading these particular securities?**

A. I don't know what the data -- where this -- where the data from this report would have come from.

**Q. Could the valuations have come from anyone other than the traders?**

MR. STERN: Objection to the form.

A. I don't know.

**Q. And in any event, you didn't provide any valuations?**

A. No.

**Q. To any of these positions?**

A. No.

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**FELDER - HIGHLY CONFIDENTIAL**

**Q. Now, did there ever come a time, Mr. Felder, where you were asked to help prepare Mr. McDade for his testimony on Friday before the bankruptcy court?**

A. No.

**Q. Did there come a time when you were asked to provide a fire sale liquidation price for the positions within your area of responsibility?**

A. No.

(Exhibit 3, document Bates stamped 1029780 marked for identification, as of this date.)

**Q. Mr. Felder, I show you what has been marked as Exhibit 3, which is an e-mail from Mr. Kirk to some unknown address. But it has with it underneath an e-mail that was sent from -- by Mr. Flores to a group of people including yourself on Thursday evening at 8:40.**

**Do you recall having gotten this e-mail, sir?**

A. I don't.

**Q. Do you have an understanding of what is meant by the phrase a fire sale liquidation of the securities that are being transferred to**

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **Barclays?**  
3 **MR. STERN:** Objection to the form.  
4 **A.** Can you repeat the question.  
5 (Record read)  
6 **A.** My understanding of the term "fire  
7 sale" would be someone who had to sell securities  
8 in a very short time frame.  
9 **Q.** Most of the securities in your area of  
10 responsibility were very high grade, were they  
11 not?  
12 **A.** In credit, there was high grade, there  
13 was high yield, there was distressed. There were  
14 different types of securities within credit.  
15 **Q.** Would you just go back to Exhibit 2  
16 for a moment and look at the summary chart. The  
17 listing there for total governments and agencies  
18 at 37.6 billion long, do you see that?  
19 **A.** Yes.  
20 **Q.** Those are very high grade, are they  
21 not?  
22 **A.** I don't know what's in there, but if  
23 it is -- if it was U.S. Government bonds, that  
24 would be very high grade. If it was senior agency  
25 paper, that would be very high grade, that would  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 on the securities. If there were ten-year  
3 Treasuries, the market could withstand that, yes.  
4 **Q.** Could you contemplate a situation in  
5 which there would ever be a fire sale price for  
6 the sale of ten-year securities -- ten-year  
7 Treasuries? I mean you would have to actually  
8 sell it for a lower price because the market  
9 couldn't bear it?  
10 **A.** There have been times in history where  
11 even the government market had has been very  
12 illiquid, like around long-term capital  
13 management, for example.  
14 **Q.** OK. That wasn't the case on the week  
15 of September 15, though, was it?  
16 **A.** The markets were certainly very  
17 volatile, given everything that happened to  
18 Lehman. But government bonds were trading  
19 liquidly, I believe.  
20 **Q.** Do you have any understanding or  
21 recollection of what was meant then in connection  
22 with the phrase "fire sale liquidation" when -- I  
23 know you don't remember getting the e-mail, I'm  
24 not trying to suggest that.  
25 **MR. STERN:** Can I hear the question.  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 be high quality. But if it was subordinated, it  
3 might not be.  
4 **Q.** Anything else that would be very high  
5 grade that would be within the asset classes that  
6 were in your area of responsibility, other than  
7 those two?  
8 **A.** Investment grade corporate bonds would  
9 be high quality. And then I would assume that  
10 there is some very high quality mortgage paper,  
11 but I'm not a mortgage expert.  
12 **Q.** The sale of those kinds of high-grade  
13 securities, does it ever -- strike that.  
14 The markets for those very high grade  
15 securities that you just articulated are quite  
16 large, are they not?  
17 **A.** The aggregate markets, yes.  
18 **Q.** And the amounts that are listed here  
19 of 37 billion, if that includes all of them,  
20 that's not a very big number in terms of the  
21 overall market in those securities, is it?  
22 **A.** No.  
23 **Q.** The market can easily absorb those  
24 sales without changing the market, couldn't it?  
25 **A.** It would depend on -- it would depend  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 **Q.** It really is -- I have got to rephrase  
3 it.  
4 I'm trying to understand, if you can  
5 assist me, Mr. Felder, what possibly could have  
6 been meant by that "fire sale liquidation" phrase  
7 on that Thursday night in this memo.  
8 **MR. STERN:** Objection to the form.  
9 **A.** I can only make a -- I can only make  
10 an assumption, if I had -- what I would think, not  
11 what the writer meant.  
12 **Q.** Of course. Tell me what you think.  
13 You -- I mean after all, you presumably were --  
14 let me start again.  
15 Someone asked you to make this  
16 assumption for the purposes of valuing a portion  
17 of the portfolio for which you had responsibility,  
18 correct? That's what this is asking you for?  
19 **MR. CERESNY:** Objection.  
20 **MR. STERN:** Objection to the form.  
21 What's the question?  
22 (Record read)  
23 **Q.** Let me be more precise. Mr. Daniel  
24 Flores asked you on Thursday evening,  
25 September 18, to assume a fire sale scenario for  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 the purposes of valuing the portfolio for which  
3 you had responsibility, did he not?  
4 A. That's what this e-mail looks like it  
5 requested.  
6 Q. So what you thought "fire sale  
7 liquidation" meant means something to me. How  
8 would you have understood this when you received  
9 it? Even if you don't recall now having gotten  
10 it, what would be your assumption as to what was  
11 meant?  
12 MR. STERN: Objection to the form. I  
13 think he has already answered that.  
14 But you can answer again.  
15 A. I would say it would mean what would  
16 the price be for selling the securities in a very  
17 short time frame.  
18 Q. What time frame?  
19 A. Basically instantaneously -- like --  
20 close to instantaneously.  
21 Q. Would the need to sell U.S. Treasuries  
22 instantaneously, let's call it on Friday morning,  
23 the 19th, have resulted in significantly or any  
24 lower price for the Treasuries in your mind?  
25 A. I'm not a Treasury expert.  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 THE WITNESS: What was my answer?  
3 (Record read)  
4 MR. STERN: Did you finish?  
5 THE WITNESS: Yes, I am finished.  
6 Q. Finished? OK.  
7 Look at Exhibit 2, if you will, on the  
8 summary chart that has been helpful to us in the  
9 past. Can you tell us which securities to which  
10 you were just referring were corporate credits?  
11 A. I don't know what these definitions  
12 are.  
13 Q. OK.  
14 A. As I have said. So if the definition  
15 of this second bucket, corporate obligations,  
16 would be corporate credit, then I would say that  
17 that would -- that would be an example.  
18 Q. You are referring now to the second  
19 entry there in the column "Total Corporate  
20 Obligations and Spot," which shows a long position  
21 of 4 -- about 4.9 billion?  
22 A. That's what it looks like.  
23 Q. Are there any other securities on this  
24 chart that you think would, if they had to be sold  
25 instantaneously on Friday morning, have resulted  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. Let me ask it this way. Of the asset  
3 classes for which you had responsibility on Friday  
4 morning, September 19, which, if any, would have  
5 had a reduction in their value as a consequence of  
6 having to sell them instantaneously, given the  
7 quantities involved and the asset classes  
8 involved?  
9 A. I don't -- I can really talk about  
10 credit.  
11 Q. Talk about what you can talk about,  
12 Mr. Felder.  
13 A. I think credit, credit, there would be  
14 a credit -- the liquidity in the credit market is  
15 substantially lower than the government bond  
16 market. So that there would be, in my opinion, a  
17 discount to move a block of corporate credit in an  
18 instantaneous fashion.  
19 Q. Without regard to the quantity?  
20 MR. STERN: Objection.  
21 Have you finished your answer?  
22 I mean there was a question pending  
23 and an answer being given. Can I get the  
24 question?  
25 (Record read)  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 in a diminution in their value in the market?  
3 MR. STERN: Objection to the form.  
4 A. I'm really only comfortable talking  
5 about credit, because that's the market I knew.  
6 Q. OK. But you did have responsibility  
7 for derivatives, right? In the fixed income area.  
8 A. For credit derivatives.  
9 Q. Credit derivatives?  
10 A. Correct.  
11 Q. Would they have had significant  
12 diminution in their value on Friday morning as a  
13 consequence of the need to sell them  
14 instantaneously?  
15 A. They would trade like a credit  
16 product, so there would be -- to move a big block  
17 of CDS would definitely create -- you would need  
18 some discount.  
19 Q. What would you mean by a big block?  
20 A. I would say north of 2 billion.  
21 Q. OK. What kind of discount would you  
22 give it?  
23 MR. STERN: Objection to the form.  
24 A. It would depend on the names that were  
25 in the portfolio.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Can you give me a range? I'm just  
3 trying to get a feel, half a percent, 20 percent?  
4 I'm trying to get a feel for what the discount  
5 would be in your mind.  
6 A. It would depend -- the market trades  
7 on spread, so it would depend on which the  
8 specific credits were and then what the aggregate  
9 size was.  
10 So, for example, financials were under  
11 a tremendous amount of pressure at this point. If  
12 it was an entire financial credit portfolio, that  
13 would be very difficult to move.  
14 Q. Would your answer be different if they  
15 were exchange traded? And by that I mean would  
16 the discount be either nonexistent or small in the  
17 disposition of an exchange-traded derivative on an  
18 instantaneous basis the morning of September 19?  
19 A. If it was a liquid product traded  
20 on -- if there was more liquidity in the product  
21 based on it being on an exchange, then the answer  
22 would be yes.  
23 Q. Yes, that there would be --  
24 A. If the product were more liquid  
25 because it was on an exchange, then a discount  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Treasuries is a huge market and the -- clearly  
3 there would not be any meaningful discount with  
4 regard to the disposition of those on an emergency  
5 basis, would there?  
6 A. I would say for on-the-run Treasuries,  
7 I wouldn't think there would be, but I assume  
8 there are some Treasury securities that have less  
9 liquidity than others. But in aggregate the U.S.  
10 Treasury market is a very, very liquid market.  
11 Q. Let me ask it this way. Did there  
12 ever come a time, Mr. Felder, where you asked your  
13 traders to price the securities in Exhibit 2 as  
14 though they were going to be sold on a fire sale  
15 basis on Friday, September 19?  
16 A. I don't recall doing that.  
17 Q. Do you recall having been asked by  
18 anybody to do that?  
19 A. I don't, because I don't recall that  
20 e-mail.  
21 Q. Is there -- do you have any  
22 explanation for me at all as to why anybody would  
23 have wanted you to do that?  
24 A. I can make an assumption.  
25 Q. Tell me.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 would be lower if there was more liquidity because  
3 of that.  
4 Q. Why would there be a discount at all  
5 on -- you would either be able to sell it on the  
6 exchange or you couldn't. Why would there be a  
7 discount in any respect with regard to the  
8 exchange-traded derivative?  
9 A. What I mean by discount, if you went  
10 to go on -- in any market, there is a size on  
11 let's say the bid or the offer, and if you go to  
12 transact, when you're done transacting, the price  
13 isn't necessarily at the same spot that you  
14 started.  
15 Q. OK.  
16 A. So I would mean the average price that  
17 you ultimately sold compared to where it started  
18 could be different, even on an exchange.  
19 Q. OK, OK. Let's go back to our chart  
20 here for a moment. You covered corporate  
21 obligations and you covered the derivatives. You  
22 say you don't --  
23 MR. STERN: Objection to the form.  
24 Q. You say you don't have specific or  
25 personal knowledge of the Treasuries, but the  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. That to put a theoretical price on a  
3 pool of assets that would be a worst-case  
4 scenario.  
5 Q. But you never recall having done that?  
6 A. No.  
7 Q. Or having talked to Mr. McDade or  
8 Mr. Flores or Mr. Kirk about having done so?  
9 A. No.  
10 Q. Did you ever hear anybody else at the  
11 firm had done so with regard to the portfolios for  
12 which they had responsibility?  
13 A. I recall getting a -- I recall getting  
14 an e-mail around the -- around mortgages and  
15 around a discount, a discount to the market price  
16 for mortgages, and I believe I forwarded it to  
17 Mike Gelband. I do remember that.  
18 Q. From whom did you get it?  
19 A. I don't remember. I would just have  
20 to assume that Charlie Spero would have been on it  
21 because he ran mortgages.  
22 Q. Did you ever get an explanation for  
23 why that -- strike that.  
24 OK. Let's soldier on here with regard  
25 to Thursday night.  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 MR. STERN: How are we doing in terms  
3 of taking a break? It is about 11. Are you  
4 at a point --  
5 MR. CARDEN: Yeah, maybe in about  
6 15 minutes. Is that OK?  
7 THE WITNESS: I'm fine.  
8 Q. You told me you don't remember getting  
9 Exhibit 3, which was Thursday night, right? Do  
10 you remember whether you were in the office on  
11 Thursday evening, the 18th?  
12 A. I don't.  
13 Q. You note in Exhibit 3, it references a  
14 list of top 100 positions, which is going to be  
15 left on the desks of each of the people to whom  
16 the e-mail is addressed. Do you see that?  
17 Do you recognize or can you tell me if  
18 Exhibit 2 is in fact a list of the 100 largest  
19 securities in the area for which you had  
20 responsibility?  
21 A. I -- only the cover e-mail says, "Here  
22 are the position level details for the top hundred  
23 longs and shorts," so I can only assume that this  
24 document is that.  
25 Q. I will draw your attention to the fact  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 have a recollection of it?  
3 A. No.  
4 Q. And you don't remember having sat at  
5 your desk at Thursday evening and have somebody  
6 come in and say, here is the hundred largest  
7 positions in your area, go value them?  
8 A. No, no.  
9 Q. And you have no recollection of having  
10 told anyone in your area to go do that?  
11 A. No.  
12 Q. Would there have been anyone else in  
13 your area that would have done that for you if you  
14 weren't available?  
15 A. The people below me, there is always a  
16 chance that someone like Alex would have reached  
17 out to someone directly if he didn't get me and  
18 there was something that was time sensitive.  
19 Q. You carry a BlackBerry, right?  
20 A. Yes.  
21 Q. So there is no doubt in your mind, is  
22 there, that you would have seen Exhibit 3 on or  
23 about the time it was sent to you, right?  
24 A. If I was looking at my BlackBerry, I  
25 would have seen it.  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 that Exhibit 3, which is in Greenwich Mean Time,  
3 with the hour difference then I can tell you is  
4 four hours. Do you remember that time period?  
5 There's about a week or two in the year where the  
6 time change is four hours. We are in that period  
7 right here.  
8 So to start again, I will tell you  
9 that Exhibit 3 is 8:41 in the evening on Thursday.  
10 A. OK.  
11 Q. And you can observe -- actually this  
12 is in Greenwich Mean Time as well, but Exhibit 2  
13 is at 7:17. So it is within an hour or so, the  
14 same time period. Do you see that?  
15 MR. STERN: You are asking if he sees  
16 what?  
17 Q. Well, let me ask it this way. Do you  
18 know, Mr. Felder, whether Exhibit 2 is the list of  
19 securities, your portion of it, that was left on  
20 your desk or was going to be left on your desk  
21 pursuant to the paragraph in Exhibit 3?  
22 A. I know that this says, "Here are  
23 position level details for top hundred longs and  
24 shorts," so I would assume that's what this is.  
25 Q. That's what I had done, but you don't  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. And you have no recollection of having  
3 asked for anybody to assist you in responding to  
4 the request in Exhibit 3 then?  
5 A. I don't recall doing that.  
6 Q. It is a total blank?  
7 A. I don't remember doing it.  
8 Q. OK. Do you remember anything about  
9 Friday morning, the 19th, where you were, what you  
10 were doing?  
11 A. I believe I had breakfast with Tom  
12 Montag that morning.  
13 Q. Who is Tom Montag?  
14 A. He runs capital markets at Merrill  
15 Lynch. Or Merrill Lynch, B of A.  
16 Q. Why were you having breakfast with  
17 him?  
18 A. He expressed interest in having me  
19 come and run the credit business over there.  
20 Q. Now, by Friday morning, the 19th, had  
21 you received a contract from Barclays?  
22 A. I believe I got a draft on Friday, but  
23 I don't believe it was Friday morning. I don't  
24 recall exactly.  
25 Q. Do you recall having gotten a draft  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 dated the 18th?  
3 A. I don't recall the exact date.  
4 Q. Do you recall where you were when you  
5 got the draft?  
6 A. I believe it was e-mailed to me, not  
7 hard copy.  
8 Q. Was it on a personal e-mail as opposed  
9 to an office e-mail?  
10 A. No, it was an office e-mail.  
11 Q. Do you remember when you had breakfast  
12 on Friday morning with the gentleman from Merrill  
13 Lynch?  
14 A. I don't remember the exact time.  
15 Q. Do you remember there having been a  
16 meeting with Mr. McDade on Friday morning at  
17 7 a.m.?  
18 A. I don't remember. I definitely went  
19 to the office first and then to the breakfast.  
20 Q. Do you recall having gotten requested  
21 by Mr. Kirk to come to Mr. McDade's office on  
22 Friday morning?  
23 A. I don't remember specifically.  
24 MR. STERN: If we could just take a  
25 break for five minutes, I would appreciate  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. I realize Exhibit 5 is not addressed  
3 to you, but I am wondering whether you have ever  
4 seen it before.  
5 A. I haven't seen it before.  
6 Q. Do you -- does it assist you in  
7 recalling at all about having been requested to  
8 participate in a meeting with Mr. McDade on Friday  
9 morning?  
10 A. No.  
11 Q. And on Friday morning, is it still  
12 your belief that the entire broker dealer is being  
13 sold, not specific inventory?  
14 MR. STERN: Objection to the form.  
15 A. I still thought, I still thought  
16 that's what was sold.  
17 Q. Do you recall having met with  
18 Mr. McDade on Friday before he testified in the  
19 bankruptcy court?  
20 A. I don't believe that I did.  
21 MR. CARDEN: Mark the last one, I  
22 think.  
23 (Exhibit 6, document Bates stamped  
24 10242982 marked for identification, as of  
25 this date.)  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 it.  
3 MR. CARDEN: I will be done here in  
4 just a second and then we will have a  
5 logical spot here, if we can do that.  
6 Mark this as Exhibit 4.  
7 (Exhibit 4, e-mail dated September 19,  
8 2008 at 1:30 p.m. marked for identification,  
9 as of this date.)  
10 Q. Have you ever seen Exhibit 4 before,  
11 Mr. Felder?  
12 A. It looks like an e-mail that -- or  
13 series of e-mails to and from me. I don't  
14 remember it specifically.  
15 Q. Do you recall Mr. Kirk having asked  
16 you to come see him in 3E that morning?  
17 A. I don't recall specifically.  
18 Q. And do you recall having been over at  
19 Barclays that morning, which is your response  
20 here?  
21 A. I don't recall.  
22 Q. This is the last one.  
23 (Exhibit 5, e-mail dated September 19,  
24 2008 at 10:34 a.m. marked for  
25 identification, as of this date.)  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. You have seen Exhibit 6 before, right?  
3 A. Yes. This is that e-mail I was  
4 referring to.  
5 Q. Correct.  
6 Mr. Haseruck, is that how you say his  
7 name?  
8 A. I don't know who he is.  
9 Q. You don't know who he is?  
10 A. No.  
11 Q. He writes to you on Thursday, the  
12 18th, about 6:14, about some mortgage inventory,  
13 questioning essentially why it has been -- well,  
14 what's your understanding of what he is  
15 questioning?  
16 A. He is questioning what he deems  
17 material write-downs on the portfolio.  
18 Q. Significant write-downs on the  
19 mortgage portfolio being acquired by Barclays,  
20 correct?  
21 A. He wrote "material."  
22 Q. And he is questioning -- why is he  
23 writing to you?  
24 A. I'm the head of fixed income.  
25 Q. This is within your area?  
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1 **FELDER - HIGHLY CONFIDENTIAL**

2 A. And so he sent -- so he sent it to me  
3 and put all the other people on it.

4 Q. Are you in a position, Mr. Felder, to  
5 tell me whether or not you think on a fire sale  
6 basis the mortgage inventory being purchased by  
7 Barclays should have been marked down to this  
8 degree?

9 MR. STERN: Objection to form.

10 A. I'm not expert enough -- I'm not  
11 expert in the mortgage asset class or the  
12 specifics of the positions to say.

13 Q. Are you in a position to -- strike  
14 that.

15 When you got this, did you have any  
16 reaction to the size of the markdown?

17 MR. STERN: Objection to form.

18 A. I just wanted to make sure that I got  
19 it to someone above me, which is why I got it to  
20 Mike Gelband, who had run mortgages prior. He was  
21 the old head of fixed income.

22 Q. Who are these other people who were  
23 cc'd, Charles Spero, James Guarino?

24 A. Charlie Spero ran mortgages. I don't  
25 know who James Guarino is. Jeff Goodman was in  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 September 19?

3 A. No.

4 Q. Do you have any memory at all,  
5 Mr. Felder, of what you were doing on  
6 September 19?

7 A. The one -- I do remember going to  
8 that, I believe going to that breakfast.

9 Q. The Merrill breakfast?

10 A. Yes.

11 Q. Now, to help you perhaps remember, it  
12 was the evening of September 19 when the  
13 transaction was presented to the bankruptcy court  
14 for approval. Do you recall that?

15 A. I recall that.

16 Q. You weren't there, though, were you?

17 A. I was not there.

18 Q. Where were you when that was  
19 happening?

20 A. I wasn't in the office, but I don't  
21 remember where I was.

22 Q. I am sorry, you were --

23 A. I was not at the office.

24 Q. Did you ever read the transcript of  
25 that hearing before the bankruptcy court?

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1 **FELDER - HIGHLY CONFIDENTIAL**

2 the, I believe in the risk group. I don't know  
3 who Kieron Keating is. I don't know Rajat  
4 Malhotra. Gary is a product controller. And I  
5 don't know who Joseph Sapia is.

6 Q. OK, let's take a break.

7 (Recess)

8 **BY MR. CARDEN:**

9 Q. Do you remember having met with anyone  
10 from Barclays on Friday, September 19?

11 A. I don't remember.

12 Q. I do draw your attention to one of the  
13 exhibits that I gave you that says you were over  
14 at Barclays. That was not a trick question. Do  
15 you remember -- let's rephrase.

16 Do you recall with whom you were  
17 meeting at Barclays on the morning of  
18 September 19?

19 A. I don't.

20 Q. And you have no recollection as to why  
21 you went over there?

22 MR. STERN: Objection to the form.

23 A. I don't.

24 Q. Do you remember having met with  
25 anybody at Barclays at Lehman Brothers on  
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1 **FELDER - HIGHLY CONFIDENTIAL**

2 A. No.

3 Q. Did you ever get a summary of it from  
4 anyone?

5 A. People were -- would send around like  
6 e-mail updates as to how things were going. I  
7 remember that.

8 Q. And you received some of those?

9 A. I recall receiving some of those, yes.

10 Q. Do you recall there had been a hearing  
11 before the bankruptcy court on Wednesday, the 17th  
12 of September?

13 A. I knew -- I remember Bart going to  
14 court, and I think it was on his anniversary,  
15 which is why I remember it, or his birthday. And  
16 it was that week.

17 Q. But you don't --

18 A. I don't know what it was.

19 Q. You don't remember what day or --

20 A. No.

21 Q. You never went to the bankruptcy court  
22 that --

23 A. No.

24 Q. Let's mark this as Exhibit 7.

25 (Exhibit 7, document Bates stamped  
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<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>BCI-EX70957 marked for identification, as of</b></p> <p>3 <b>this date.)</b></p> <p>4 <b>Q. Mr. Felder, showing you what has been</b></p> <p>5 <b>marked as Exhibit 7, which is an e-mail from</b></p> <p>6 <b>Mr. Lowitt to three people, I think, including</b></p> <p>7 <b>yourself. Do you see that?</b></p> <p>8 <b>A. Yes.</b></p> <p>9 <b>Q. Maybe that's four people.</b></p> <p>10 <b>Do you recall having gotten this</b></p> <p>11 <b>e-mail?</b></p> <p>12 <b>A. No, not specifically.</b></p> <p>13 <b>Q. Well, do you remember generally having</b></p> <p>14 <b>met with anybody at Barclays, now that you have</b></p> <p>15 <b>seen this, on September 19th, to talk about</b></p> <p>16 <b>positions and marks?</b></p> <p>17 <b>A. No.</b></p> <p>18 <b>Q. Do you remember having received, in</b></p> <p>19 <b>the early morning hours of September 19 and into</b></p> <p>20 <b>the morning, spreadsheets reflecting positions in</b></p> <p>21 <b>areas for which you had responsibility?</b></p> <p>22 <b>A. Not specifically.</b></p> <p>23 <b>Q. Let's mark a couple of them here.</b></p> <p>24 <b>Mark this as Exhibit 8.</b></p> <p>25 <b>(Exhibit 8, e-mail September 19, 2008</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>at 10:51 a.m. with attachment marked for</b></p> <p>3 <b>identification, as of this date.)</b></p> <p>4 <b>Q. Have you ever seen Exhibit 8 before?</b></p> <p>5 <b>A. No.</b></p> <p>6 <b>(Exhibit 9, e-mail dated September 19,</b></p> <p>7 <b>2008 at 2:06 p.m. with attachment marked for</b></p> <p>8 <b>identification, as of this date.)</b></p> <p>9 <b>Q. Mr. Felder, showing you what has been</b></p> <p>10 <b>marked as Exhibit 9, which is an e-mail from</b></p> <p>11 <b>Mr. Kirk to, again, an address that is</b></p> <p>12 <b>unrecognizable, but it has attached to it an</b></p> <p>13 <b>e-mail from Mr. McGarvey to a group of people</b></p> <p>14 <b>including yourself on Friday morning at</b></p> <p>15 <b>10 o'clock.</b></p> <p>16 <b>Do you remember having gotten this</b></p> <p>17 <b>e-mail?</b></p> <p>18 <b>A. I don't.</b></p> <p>19 <b>Q. And I take it you have no recollection</b></p> <p>20 <b>of having gotten the attachment?</b></p> <p>21 <b>A. Correct.</b></p> <p>22 <b>Q. And this CD and MM pricing, CD and MM,</b></p> <p>23 <b>that would be in your area, right? That would be</b></p> <p>24 <b>money market and CDs. That was something that you</b></p> <p>25 <b>identified previously as being something that was</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>in fixed income?</b></p> <p>3 <b>A. That would have been in fixed income.</b></p> <p>4 <b>Q. Does this document assist you in any</b></p> <p>5 <b>respect in recalling what was taking place on</b></p> <p>6 <b>Friday morning with regard to the valuation of</b></p> <p>7 <b>positions that were within your area of</b></p> <p>8 <b>responsibility?</b></p> <p>9 <b>A. No. I don't recall being in the</b></p> <p>10 <b>meeting.</b></p> <p>11 <b>Q. And it is still your recollection --</b></p> <p>12 <b>strike that.</b></p> <p>13 <b>It is still the fact that you don't</b></p> <p>14 <b>recall having met with anybody from Barclays about</b></p> <p>15 <b>pricing of any of these securities?</b></p> <p>16 <b>A. I don't recall.</b></p> <p>17 <b>Q. Going back to Exhibit 7 for just a</b></p> <p>18 <b>moment. Would there have been anyone else in --</b></p> <p>19 <b>among Mr. Amin and Mr. Donini and Mr. Spero who</b></p> <p>20 <b>would have understood or known the process of</b></p> <p>21 <b>providing valuations for assets within your area?</b></p> <p>22 <b>A. Hyung Lee was the cohead of fixed</b></p> <p>23 <b>income, and then within the different asset</b></p> <p>24 <b>classes, Jim Seery or Fred Orlan would have been a</b></p> <p>25 <b>high yield or leveraged loan person. Charlie</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>would have been a mortgage person.</b></p> <p>3 <b>Q. Charlie?</b></p> <p>4 <b>A. Charlie Spero.</b></p> <p>5 <b>Kaushik would have been rates,</b></p> <p>6 <b>commodities and FX. John Coughlin would have been</b></p> <p>7 <b>repo or anything short term, and Mike Gelband and</b></p> <p>8 <b>Alex would have been the other two.</b></p> <p>9 <b>Q. What about corporates? Who would</b></p> <p>10 <b>have --</b></p> <p>11 <b>A. Anything for corporates, for</b></p> <p>12 <b>corporates, it would have been me.</b></p> <p>13 <b>Q. So pricing for any corporate</b></p> <p>14 <b>obligations would have been something that you</b></p> <p>15 <b>would have been most familiar with as opposed to</b></p> <p>16 <b>the people you just mentioned?</b></p> <p>17 <b>A. Yes. If they asked for a price on an</b></p> <p>18 <b>investment grade corporate bond that -- they would</b></p> <p>19 <b>have come to me or someone below me.</b></p> <p>20 <b>Q. What was happening in -- let's take it</b></p> <p>21 <b>a step at a time. If you go back to, I think it</b></p> <p>22 <b>was Exhibit 2, just as a frame of reference, this</b></p> <p>23 <b>summary of asset classes, is it possible for you</b></p> <p>24 <b>to assist me as to what was going on in the market</b></p> <p>25 <b>in a general respect from, say, the end of the</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 week of September 15 for each of these asset  
3 classes?

4 A. I could really only talk to the credit  
5 side.

6 Q. OK, give me that.

7 A. Spreads were widening significantly on  
8 the back of the Lehman bankruptcy, specifically  
9 within financials.

10 We weren't -- we weren't trading so I  
11 could -- because we were bankrupt, so there  
12 weren't -- you could only just watch your  
13 Bloomberg screen, so obviously the equity markets  
14 were going down a lot. There was a lot of  
15 volatility, and in general, spreads were  
16 significantly wider.

17 Q. No way for you to quantify that in any  
18 general respect or -- did it change through the  
19 week? Did it spike, did it flatten, did it --

20 A. No. I -- I don't remember the exact  
21 numbers on things, but there were some things that  
22 were north of a hundred basis points wider over  
23 the course of that week.

24 Q. You said Coughlin was responsible for  
25 repos? I think that's what you said in passing.

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1 **FELDER - HIGHLY CONFIDENTIAL**

2 A. He ran financing for fixed income.

3 Q. Let's go back to Tuesday. We were  
4 talking about Tuesday, September 16, and what you  
5 were doing that day.

6 If you had come into the office, I  
7 would like you to tell me as best you can, just  
8 try to walk through the week as to what else you  
9 were doing on that Tuesday and the Wednesday and  
10 Thursday as well.

11 A. On the Tuesday, there was the meeting  
12 with, I believe it was Tuesday, with Jerry and --

13 Q. That's where we left you, we left you  
14 with Mr. Diamond and Mr. Del Missier.

15 A. Right.

16 I recall that most of the rest of the  
17 week was trying to keep the team together and  
18 talking to all the individual people within the  
19 credit business who were out interviewing and  
20 getting job offers to try to keep the team  
21 together.

22 Q. Were you meeting with Barclays during  
23 that time period on what I'll characterize as, you  
24 know, the asset classes for which you had  
25 responsibility or anything else? Other than your

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 compensation.

3 A. Yeah. I had coffee with Eric  
4 Bommensath, I don't remember which day it was, it  
5 was either -- I believe it was Tuesday or  
6 Wednesday, who was going to be my boss. And we  
7 started -- he wanted the names of what I deemed to  
8 be the top people within the credit space. So we  
9 spent time going through that and just talking  
10 about the business overall.

11 Away from that, I don't recall any  
12 specific meetings with Barclays.

13 Q. Did you meet with any lawyers that  
14 week? Going on from Tuesday or the Tuesday  
15 meeting with Mr. Diamond, after that --

16 A. Right.

17 Q. -- did you meet with any lawyers?

18 A. No.

19 Q. Did you ever meet privately with  
20 Mr. McDade?

21 A. I don't recall meeting with him  
22 privately.

23 Q. Did you ever have a private meeting  
24 with Mr. Kirk concerning the transaction and, you  
25 know, what had been agreed upon by the parties?

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1 **FELDER - HIGHLY CONFIDENTIAL**

2 A. No.

3 Q. What about Mr. Kelly? Did you have  
4 any conversation with Mr. Kelly that week? Martin  
5 Kelly?

6 A. Martin -- no.

7 Q. Do you even know Martin Kelly?

8 A. I know the name.

9 Q. Who do you know him to be?

10 A. I knew him to be sort of a -- I don't  
11 know what his exact function is, but I knew him to  
12 be sort of a right-hand person to the CFO, to Ian.  
13 But I couldn't tell you exactly what his function  
14 is.

15 Q. Did you ever tell or write to anybody  
16 that Barclays was cherry-picking assets?

17 A. I don't recall doing that.

18 Q. Do you recall ever having written  
19 anybody to the effect that Barclays was choosing  
20 the assets which they wanted to purchase?

21 A. I did think that Barclays was choosing  
22 and pricing assets. That was just the  
23 impression -- that was the impression.

24 Q. What was that impression based on?

25 A. I guess I remember Mike Keegan at --

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1 FELDER - HIGHLY CONFIDENTIAL  
2 in one of the meetings, I think it was, I guess  
3 that Monday.  
4 Q. Monday, the 15th?  
5 A. I believe. Just the way he asked  
6 about -- on the corporate side, I remember him  
7 asking about auction rate securities and saying  
8 like what -- like are you comfortable with these,  
9 and I remember saying, yes, we were comfortable  
10 with them.  
11 Q. Anything else?  
12 A. No, that's what I -- I remember that.  
13 Q. It may be my confusion, I apologize if  
14 it is, but I thought I understood you to say that  
15 you thought that Barclays was buying the entire  
16 broker dealer. How does that square with the fact  
17 that they are selecting assets to purchase? I  
18 don't understand how those things are consistent.  
19 Maybe they are, but I don't understand.  
20 MR. STERN: Objection to the form.  
21 A. I don't know that -- I just know what  
22 I had heard about what the transaction was, that  
23 they were looking at buying the broker dealer. I  
24 don't know the specifics of how a transaction like  
25 this would occur.

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1 FELDER - HIGHLY CONFIDENTIAL  
2 Lehman Brothers as opposed to the entire broker  
3 dealer?  
4 MR. STERN: I think you should take a  
5 chance to read the document.  
6 THE WITNESS: OK.  
7 A. What was the question?  
8 (Record read)  
9 A. I just remember them asking opinions  
10 on things which led me to believe that a decision  
11 process was being made.  
12 Q. OK. Do you remember them asking you  
13 about anything or speaking about anything other  
14 than auction rates?  
15 A. That was all I recall being asked.  
16 Q. Did you ever have a conversation with  
17 anybody at Barclays about the valuations of any of  
18 the positions or asset classes in the area of your  
19 responsibility?  
20 A. What do you mean by value -- by  
21 valuation?  
22 Q. Marks.  
23 A. Like where are things marked? Around  
24 the auctions, based on the -- where the prices  
25 were, I remember them -- I remember Mike Keegan

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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. But you also knew during that week,  
3 did you not, that Barclays was picking the assets  
4 they wanted to purchase?  
5 A. I knew they were looking at the -- at  
6 all the different assets and forming opinions on  
7 them.  
8 (Exhibit 10, e-mail dated September  
9 17, 2008 at 12:34 p.m. marked for  
10 identification, as of this date.)  
11 Q. Mr. Felder, I show you what has been  
12 marked as Exhibit 10. Midway on the first page,  
13 there is an e-mail from you to a collection of  
14 people where you are stating that the Barclays  
15 folks picked the assets and recall them saying  
16 they didn't want the auctions carries, but I  
17 wasn't in the meeting.  
18 Do you see that?  
19 A. Um-hm.  
20 Q. You mentioned about the auction rates  
21 in your conversation.  
22 A. Because I remember -- yes.  
23 Q. Does this document refresh your  
24 recollection to any extent that Barclays was  
25 interested in only purchasing certain assets of

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1 FELDER - HIGHLY CONFIDENTIAL  
2 asking, you know, what do you think of these  
3 securities at these prices?  
4 Q. OK.  
5 A. And I recall saying to him that I  
6 think you're going to get -- ultimately people  
7 would get their money back on these securities  
8 from -- because they were at a discount. They  
9 weren't marked at par anymore, given what went on  
10 in that market. But that over time, those assets  
11 would -- you would ultimately get your money back.  
12 Q. Were the auction rates within your  
13 area of responsibility, within fixed income?  
14 A. Yes.  
15 Q. And you know they didn't move to  
16 Barclays, right?  
17 MR. STERN: Objection, objection to  
18 form.  
19 A. I don't know that they didn't move to  
20 Barclays.  
21 Q. The conversation that you had with  
22 Mr. Keegan on Monday about -- you think it was  
23 Monday -- about the auction rates, was this a  
24 face-to-face meeting that you had with him?  
25 A. Yes. It was in that -- it was up on

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32.

**Q.** In that room where you were escorting some people in and occasionally staying yourself?

**A.** Correct.

**Q.** Do you recall having spoken about any other asset classes or any other types of assets other than auction rates in that room to Barclays people with regard to marks?

**A.** No.

**Q.** Were you aware during the week that there was a real interest or focus on the marks that were being placed on the asset classes, or the positions rather, in your area of responsibility?

**A.** Well, based on -- based on, for example, that mortgage e-mail, there was focus -- the -- I don't want there to be a disconnect between my technical area of responsibility, given the job that I had gotten four days before, and what I -- what I really had a knowledge of, which was the credit piece. So I -- I did have the sense that there was focus on the marks of positions, but they weren't my areas of expertise.

**Q.** Did you ever instruct any traders

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within any area of fixed income during the week of September 15 to provide you marks on any positions?

**A.** I don't recall specifically asking for marks from people.

**Q.** Did you ever instruct any traders within your area of responsibility to mark down any assets within the fixed income area?

**A.** I don't recall instructing anyone to mark.

**Q.** Can you tell me who would have had the conversation with the trader concerning the mortgages that you have seen previously in terms of providing marks for those?

**A.** It would have gone through Charlie Spero.

**Q.** OK. Did you ever have a conversation with anyone at Lehman Brothers, Mr. Felder, about a discount being provided to Barclays on its purchase of Lehman assets?

**A.** I don't recall any specific conversations.

**Q.** Did you ever hear generally that Barclays had been provided a discount in its

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purchase of Lehman assets?

**A.** Well, that mortgage e-mail, for example, would give that indication, so that would be an example of something that --

**Q.** OK, thank you for that. Other than the indication and the specific instance concerning the mortgages, did you ever hear of any, I'll call it global discount given to Barclays for -- in purchase of the Lehman assets?

**A.** No, I don't recall hearing about that.

**Q.** Did you ever read anywhere or hear from anyone that Barclays had purchased certain valuation or value of Lehman assets for a discount?

**A.** No, not specifically.

**Q.** Were you aware that on Tuesday morning, Mr. Diamond and I think others at Barclays had an analyst conversation, telephone conversation?

**A.** Analysts?

**Q.** Yeah. They had a telephone conversation with various people?

**A.** No.

**Q.** You weren't on it, in any event?

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**A.** No. What do you mean by analyst?

**Q.** Not analysts, they were investors. It was an investor call and a collection -- I don't know who got access to the call. All I've seen is a transcript, there was an investor call --

**A.** No.

**Q.** -- of some kind, and my question is, were you on that call?

**A.** No.

**MR. STERN:** Just so the record is clear, I think in one of the previous answers Mr. Felder referred to "that mortgage e-mail," and I believe he was referring to Exhibit 6, just to avoid any confusion.

**MR. CARDEN:** Let's mark this Exhibit 11.

(Exhibit 11, document Bates stamped 10284073 marked for identification, as of this date.)

**Q.** Have you seen Exhibit 11 before, Mr. Felder?

**A.** I believe Dan was the one who was sending out the updates. He was a lawyer, so he

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1 FELDER - HIGHLY CONFIDENTIAL  
2 was sending out updates on the court process.  
3 Q. Who was Mr. Schellbach?  
4 A. Pete ran the distressed trading  
5 business.  
6 Q. Do you remember having gotten this  
7 e-mail?  
8 A. Not specifically, but I -- you know,  
9 now that I see it, I'm remembering asking him for  
10 updates that Friday night.  
11 Q. Do you remember any other  
12 conversations concerning what Barclays was  
13 actually purchasing and at what values? Does this  
14 cause you to have a recollection as to that?  
15 A. No.  
16 (Exhibit 12, three-page letter dated  
17 September 18, 2008 marked for identification  
18 as of this date.)  
19 Q. You mentioned earlier, Mr. Felder,  
20 that you had gotten by e-mail a draft offer letter  
21 from Barclays. Is that that document? Is this  
22 that document?  
23 A. This looks like it, yes.  
24 Q. This still reflects you are going to  
25 get the [REDACTED] in February, but that  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Why don't you hand that one back.  
3 That was a mistake somewhere along the lines. I  
4 figured that it was. We will substitute a fresh  
5 copy when that comes.  
6 Now, it mentions that you -- in  
7 addition to the [REDACTED], you had a special cash  
8 payment of [REDACTED] correct?  
9 A. Correct.  
10 Q. Maybe I misheard. Was that something  
11 that you talked about with Mr. Diamond on Tuesday  
12 morning?  
13 A. That was the retention payment, that  
14 was the 25 percent --  
15 Q. Of --  
16 A. -- of the '08 number split half one  
17 year after you were still employed at Barclays and  
18 then the other half two years after.  
19 Q. Maybe it was my confusion. I thought  
20 I heard you say 25 percent. That didn't look like  
21 25 percent of [REDACTED] to me, so what am I  
22 missing here?  
23 Essentially it ends up being  
24 100 percent of your '08 compensation, correct,  
25 split into two pieces?  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 ultimately was adjusted is your recollection,  
3 correct?  
4 A. Yes.  
5 Q. Do you think you got this on  
6 September 18?  
7 A. I don't recall.  
8 Q. You got it at your office e-mail,  
9 though?  
10 A. Yes. I believe I got it in my office  
11 e-mail.  
12 (Exhibit 13, Letter dated September  
13 21, 2008 marked for identification as of  
14 this date.)  
15 Q. Mr. Felder, I show you what has been  
16 marked as Exhibit 13. This is your offer letter,  
17 isn't it, sir, dated September 21? I am sorry,  
18 yeah, your offer letter which you signed.  
19 A. Yes.  
20 Q. That is your signature on page 3,  
21 correct?  
22 A. Yes.  
23 Q. And I take it that when you got your  
24 offer letter, it did not have the fourth page?  
25 A. No.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. No, no. Each piece was 25 percent, so  
3 25 percent of [REDACTED] would be [REDACTED]  
4 [REDACTED]  
5 Q. Right.  
6 A. And the way this is set up, you  
7 receive a special cash award of [REDACTED]  
8 half payable on your first --  
9 Q. I got you.  
10 A. -- starting date. That would be [REDACTED]  
11 [REDACTED]  
12 Q. I understand that.  
13 MR. CARDEN: We now have the exhibit,  
14 so we will mark it. Let's take a break here  
15 for just a moment and see where we are.  
16 (Recess)  
17 (Exhibit 14, document Bates stamped  
18 10292661 marked for identification, as of  
19 this date.)  
20 Q. Mr. Felder, I am going to show you  
21 what has been marked as Exhibit 14, Mr. Felder,  
22 which is one of these e-mail chains. I want to  
23 draw your attention to the one at the bottom here  
24 from Mr. Lowitt to you and Mr. Gelband and  
25 Mr. Kirk on Wednesday, the 17th, at around 10 in  
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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 the evening, or 5 rather. No, 10.  
3 Do you recall having gotten this?  
4 MR. STERN: Let's read it first.  
5 A. I don't recall it specifically.  
6 Q. Well, do you recall generally there  
7 being any conversation about the need to shrink  
8 the matched book?  
9 A. I don't recall that. I recall the --  
10 I recall instructions from Ian to make sure that  
11 the traders weren't doing things that sent cash  
12 out of the firm. I remember that as a broad  
13 instruction that he gave.  
14 Q. Do you have an understanding of what  
15 is meant by shrinking the matched book in this  
16 e-mail from Mr. Lowitt?  
17 A. A matched book is a repo book where it  
18 is matched, so there are two sides to it. So if  
19 you shrunk a matched book, you would eliminate  
20 both sides and then the aggregate size would be  
21 smaller.  
22 Q. Do you have any memory at all as to  
23 why there was a need in his mind to shrink the  
24 matched book?  
25 A. No.

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 EXAMINATION BY  
3 MS. TAGGART:  
4 Q. My name is Erica Taggart. I represent  
5 the creditors committee.  
6 I have some question, mostly directed  
7 to finding out who might have some of the  
8 information you didn't know.  
9 Did you work at all -- I believe  
10 Mr. Carden asked you that you weren't involved in  
11 any repurchase agreement with the Federal Reserve,  
12 right?  
13 A. Correct.  
14 Q. Do you know anyone who was involved  
15 from Lehman in dealing with the Federal Reserve in  
16 connection with the primary dealer credit  
17 facility?  
18 A. I can only make an assumption as to  
19 who it would be.  
20 Q. OK. Who do you know that that might  
21 fall under their responsibilities at Lehman?  
22 A. I would think it would fall within the  
23 Treasury function. So either Ian Lowitt or Paolo  
24 Tonucci, who would be the treasurer. Those would  
25 be the two people.

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. Did you have any conversations with  
3 anybody about needing to shrink the matched book  
4 during the week of September 15?  
5 A. Not that I recall.  
6 Q. What did you mean when you wrote here,  
7 "What about the line from BACR," that's Barclays  
8 credit? Is that what that is supposed to mean?  
9 A. I would assume that's Barclays.  
10 Q. What did you mean by that?  
11 A. I had -- I -- guess I was asking  
12 whether there was -- whether Barclays was going to  
13 finance Lehman, whether that was --  
14 Q. Were you aware at or about this time  
15 that the Fed had done a repo with Lehman?  
16 A. No.  
17 Q. So I take it you're not aware of  
18 whether Barclays was going to take over the Fed's  
19 position in connection with that repo?  
20 A. No, not aware of that.  
21 MR. CARDEN: I'm done.

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1 **FELDER - HIGHLY CONFIDENTIAL**  
2 Q. Did you speak with Mr. Lowitt or  
3 Mr. Tonucci about anything related to the Federal  
4 Reserve at this time?  
5 A. No. Not that I recall.  
6 Q. Did you speak to anyone related to the  
7 repurchase agreement related to the Federal  
8 Reserve?  
9 A. No.  
10 Q. Now, I understand that you didn't  
11 prepare any witnesses for the sale hearing; is  
12 that correct?  
13 A. I am sorry, prepare any?  
14 Q. Witnesses for the sale hearing that  
15 happened on September 19.  
16 A. No.  
17 Q. Do you know anyone at Lehman who did  
18 prepare anyone for the sale hearing?  
19 A. No.  
20 Q. Did you ever have any interaction with  
21 JP Morgan during the week of September 15?  
22 A. No.  
23 Q. Do you know who at Lehman did have any  
24 interaction with JP Morgan at this time?  
25 A. I would only be assuming again. I can

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1 FELDER - HIGHLY CONFIDENTIAL  
2 give you a list of people who it might be, but I  
3 don't know.

4 Q. Who are the people at Lehman that it  
5 was your understanding within their  
6 responsibilities would be working with JP Morgan  
7 prior to the sale transaction?

8 A. I would think it would be Ian and  
9 Paolo, again.

10 Q. Besides the people that you mentioned  
11 earlier today, do you know anyone else at Lehman  
12 who was involved in valuing any assets or  
13 securities that became part of the sales  
14 transaction?

15 A. Not specifically.

16 Q. Is there anybody else besides those  
17 that you have mentioned today who it was within  
18 their area of responsibility to do valuations of  
19 securities or assets at Lehman?

20 A. Can you repeat the question.

21 (Record read)

22 A. What do you mean by -- obviously  
23 traders mark --

24 Q. Right. Besides the traders, I think  
25 you said that the traders then give their

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1 FELDER - HIGHLY CONFIDENTIAL  
2 information to the different department heads.

3 You deal with the credit and fixed income. Is  
4 there anyone else that you know of who during this  
5 time was collecting information from traders about  
6 valuation of assets that might go to Barclays?

7 A. The -- oh, specifically -- no, not  
8 specifically.

9 Q. And it is my understanding you weren't  
10 involved in the negotiation of any of the  
11 contracts that related to the sale of assets to  
12 Barclays, correct?

13 A. Correct.

14 Q. Who do you know at Lehman who was  
15 involved in that negotiation?

16 A. I could only -- I could only make an  
17 assumption. I don't know specifically.

18 Q. Who were the people that you believe  
19 might have been involved in negotiations with  
20 Barclays over the sale?

21 A. Bart McDade, Alex Kirk, Mike Gelband.  
22 These are just -- this is just -- would be my  
23 assumption.

24 Potentially Skip McGee, ran investment  
25 banking. Mark Schaefer.

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1 FELDER - HIGHLY CONFIDENTIAL

2 Q. What was Mark Schaefer's role?

3 A. He -- I think he was head of M&A.

4 Q. Did you ever speak to anybody about  
5 any terms or conditions about the sale  
6 transaction?

7 A. No.

8 Q. Did you ever have any involvement with  
9 the DTC, Depository Trust and Clearing  
10 Corporation?

11 A. No.

12 Q. Do you know who at Lehman was  
13 interacting with the DTC at this time?

14 A. I don't.

15 Q. Were you involved at all in the  
16 decision about what amount, if any, of the  
17 residential mortgage backed securities would be  
18 part of that transaction?

19 A. No.

20 Q. Do you know who was involved in those  
21 decisions?

22 A. I don't.

23 Q. The weekend between -- the weekend of  
24 September 20 and 21, were you involved in any  
25 meetings with Barclays during that time?

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1 FELDER - HIGHLY CONFIDENTIAL

2 A. Weekend of the 20th and 21st? I  
3 was -- that weekend I was working with Eric  
4 Bommensath around coming up with contracts for the  
5 people that would be on the team in credit.

6 Q. Any other meetings with anyone from  
7 Barclays?

8 A. No.

9 Q. Were you involved at all in the  
10 assessment of the value of the goodwill of LBI  
11 that was purchased by Barclays?

12 A. No.

13 Q. Do you know who was involved in that  
14 valuation?

15 A. No.

16 Q. Were you involved in any valuation of  
17 real estate?

18 A. No.

19 Q. Do you know who would be involved in  
20 that valuation?

21 A. Mark Walsh ran our real estate group,  
22 but I don't know who was involved in valuing it.

23 (Exhibit 15, document Bates stamped  
24 BCI-EX30865 with attachment marked for  
25 identification, as of this date.)

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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Exhibit 15 goes from the numbers  
3 BCI-EX30865 -- actually that's the cover e-mail,  
4 and then there is a number of documents of a  
5 spreadsheet that are attached to it, and it was an  
6 e-mail from Stephen King dated September 17, 2008.  
7 Have you ever seen Exhibit 15?  
8 A. No, I don't recall seeing it.  
9 Q. Who is Stephen King?  
10 A. Steven works at Barclays. He -- and  
11 at least now he is in -- he was in that PMTG  
12 group.  
13 Q. And it is to C. Spero. Is it your  
14 understanding that's Charles Spero?  
15 A. Yeah, that's what it looks like.  
16 Q. Who is Jasen Yang?  
17 A. I don't know.  
18 Q. You will see in the middle of this  
19 e-mail, it says, "I am going to have to do the  
20 same on the rest of the portfolio. I guess that  
21 is Felder, right?" Do you see that?  
22 A. Yes.  
23 Q. Is it your understanding that's  
24 referring to you?  
25 A. It looks that way, yes.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. And who is Gilles Aublin?  
4 A. He was in product control for credit.  
5 Q. You will see that in the first of the  
6 bullet points, it says, "You will be provided  
7 later today the updated final list of assets that  
8 will be carried over to the new entity."  
9 Do you see that?  
10 A. Yes.  
11 Q. Were you provided with an updated  
12 final list of assets that would be carried over to  
13 the new entity?  
14 A. I don't recall.  
15 Q. Do you know what this is referring to?  
16 A. Only just what it says in the e-mail.  
17 Q. Did you receive any list from  
18 Mr. Aublin or his team that reflected assets that  
19 were carried over to the new entity?  
20 A. I don't recall specifically getting  
21 one.  
22 Q. Then you see in the third bullet point  
23 it says, "Today it is critical that all positions  
24 are marked carefully, as this mark will be the  
25 basis of the transfer." Do you see that?  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Did any of these people, Stephen King,  
3 Charles Spero or Jasen Yang ever contact you about  
4 doing any work with the portfolio that is  
5 described here?  
6 A. No. Not that I recall.  
7 Q. Do you have an understanding under "BB  
8 takes" what's being described here?  
9 A. "BB takes." BB -- well, it says takes  
10 and leaves, so I assume it is securities being  
11 taken and securities being left.  
12 Q. Were you involved in putting together  
13 these numbers that are on Exhibit 15?  
14 A. No.  
15 (Exhibit 16, e-mail dated September  
16 18, 2008 at 12:23 p.m. marked for  
17 identification, as of this date.)  
18 Q. The next exhibit, 16, is an e-mail  
19 from Gilles Aublin dated September 18, 2008, to  
20 Fred Orlan and others, I believe you are on the cc  
21 line, with the subject "Asset Transfer Update."  
22 Do you remember receiving this e-mail?  
23 A. I don't recall specifically.  
24 Q. Is that your e-mail address on the cc  
25 line?  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. Were you involved at all in marking  
4 the assets on or about September 18?  
5 A. No.  
6 Q. And did you speak to Mr. Aublin at all  
7 about the issues of valuation of the asset  
8 transfer?  
9 A. No.  
10 Q. You testified earlier today that you  
11 returned the [REDACTED] back to Lehman.  
12 A. Correct.  
13 Q. Why did you do that?  
14 A. I thought it was the right thing to  
15 do. Given what had happened, I felt it was the  
16 proper, proper thing to do.  
17 Q. When had you received that amount?  
18 A. I received part in June of '08 and  
19 part in September.  
20 Q. In addition to the [REDACTED] from  
21 Lehman, had you been receiving an ongoing salary?  
22 A. I had my normal salary, yes.  
23 Q. And did you return any of the normal  
24 salary?  
25 A. No.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. In the presentations that you were  
3 making to the room of people on Monday, the 15th,  
4 regarding the credit positions, did you present  
5 any documents at that meeting?  
6 MR. STERN: Objection to the form.  
7 A. On Monday. There were some risk  
8 reports there, I believe.  
9 Q. And you -- did you present those risk  
10 reports to the people in the group?  
11 A. I gave -- I gave them to the Barclays  
12 folks.  
13 Q. Did they have a -- the document have a  
14 title on them?  
15 A. I don't recall a specific title.  
16 Q. About how long were the documents that  
17 you presented?  
18 A. I don't remember specifically.  
19 Q. Was there further discussion about  
20 your presentation?  
21 A. It wasn't a -- it wasn't a  
22 presentation. It was -- we -- I remember handing  
23 over risk reports, and then any questions that got  
24 asked, we would try to answer. Because I remember  
25 the specific auction rate question, for example.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 A. There were XXX securities. There were  
3 contingent capital securities. There were DPC  
4 securities.  
5 Q. I am sorry?  
6 A. DPC. There were -- then I guess there  
7 were munis and taxable munis.  
8 Q. What was the approximate value that  
9 you were presenting for that total group of  
10 auction rate securities?  
11 A. I didn't present any values.  
12 Q. Why had you discounted those  
13 securities?  
14 MR. STERN: Objection to the form.  
15 A. I didn't discount securities. These  
16 were the marks from the traders that were on the  
17 risk report.  
18 Q. What was your basis for saying that  
19 you believed that Barclays could eventually get  
20 par back from those securities?  
21 A. It was based on my opinion of the  
22 credit quality of the underlying securities from  
23 the work that had been done by the -- our hybrid  
24 capital team that was responsible for those  
25 securities.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. What was the specific auction rate  
3 question that you remember?  
4 A. What, what is your opinion of the --  
5 of these securities?  
6 Q. What was your answer?  
7 A. I believe it was that I was -- based  
8 on the prices that they were at over time and the  
9 credit quality, that we would expect that we would  
10 get par back, that you could expect that you would  
11 get par back on the securities.  
12 Q. At the time of September 15, had you  
13 been valuing them at par?  
14 A. I don't remember all the individual  
15 levels, but in general, they were not at par.  
16 Q. In general, is it correct that the  
17 auction rate securities that you were presenting  
18 were valued at that time at a discount?  
19 A. Yes, at a discount to par.  
20 Q. Approximately how much of the discount  
21 to par at that time?  
22 A. I don't recall specifically, because  
23 there were different types. I don't recall the  
24 exact numbers.  
25 Q. What were the different types?  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 Q. Who were you referring to as part of  
3 the hybrid capital team that had done work related  
4 to these securities?  
5 A. Anthony Bugliari. Gia Rys, R-Y-S.  
6 Those would be the main people.  
7 Q. You testified earlier today that you  
8 didn't remember any private meetings with Bart  
9 McDade. Did you meet at all with Bart McDade the  
10 week of September 15?  
11 A. I definitely saw him around. I  
12 don't -- I don't recall a specific meeting,  
13 though.  
14 MS. TAGGART: I don't have any more  
15 questions.  
16 MR. MAGUIRE: Mr. Felder, I don't have  
17 any questions for you. I would make a  
18 request of your Barclays counsel that with  
19 respect to Exhibit 11, which I believe you  
20 were provided with, that makes a reference  
21 to a Barclays lawyer coming in and making an  
22 explanation. I believe that's in the  
23 context of the hearing, the proceedings  
24 associated with the bankruptcy court hearing  
25 on September 19. I would ask that Barclays  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 provide us with the record of that  
3 explanation.

4 MR. STERN: Are you suggesting there  
5 is something other than the transcript of  
6 the hearing?

7 MR. MAGUIRE: If there is nothing  
8 other than the transcript, if you could  
9 confirm that, that would be fine. If there  
10 is anything other than the transcript, if  
11 you could provide us with the record.

12 MR. STERN: Sure, we will definitely  
13 look into that.

14 MR. MAGUIRE: Thank you.

15 EXAMINATION BY

16 MR. BYMAN:

17 Q. Mr. Felder, you and I have met before.  
18 I am Bob Byman for the examiner. I just want to  
19 follow up on the risk reports that you were  
20 talking about that were present on September 15.  
21 Could you describe those in a little more detail,  
22 who prepared them, what risks were they  
23 evaluating, what type of information was conveyed  
24 in them?

25 A. If I recall, they were the broad risk  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 point, how much a position would move based on the  
3 basis point shift in yield.

4 VOD, which stands for value on  
5 default, meaning how much you would lose if that  
6 position defaulted and recovered. 40 cents is the  
7 market standard for recovery within corporates.

8 There would also be a VOD zero column,  
9 which would be how much would you lose if there  
10 was a default and the security went to zero.

11 And then there would be lists of top,  
12 long and short positions based on that DVOI metric  
13 which I mentioned and also that VOD metric which I  
14 mentioned. There would also be portfolio  
15 statistics, such as, BAR, that would be shown and  
16 those types of general metrics.

17 Q. Are you familiar with the concept of  
18 risk appetite?

19 A. Yes.

20 Q. Did these reports quantify the amount  
21 of risk appetite usage the businesses that you  
22 were responsible for were consuming?

23 A. There would be some -- I don't know if  
24 in those reports risk appetite was on there.

25 Q. Were there routine reports that your

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1 FELDER - HIGHLY CONFIDENTIAL  
2 reports for the credit business which would have  
3 been produced by Luan Sha La, L-U-A-N, S-H-A, L-A,  
4 and Hans Chunk. They were -- they sat within the  
5 risk management function, and they were our -- the  
6 standard risk reports that were delivered either  
7 on a daily or weekly basis that gave a broad  
8 overview as to the credit risk and the credit  
9 business.

10 Q. So these were routine reports that  
11 happened to have been generated that you brought  
12 with you?

13 A. Correct.

14 Q. As opposed to something that you  
15 created for the meeting?

16 A. Correct.

17 Q. In these routine reports, can you give  
18 somebody like me, who is a total layman who  
19 doesn't know how you calculate risk or what you do  
20 with it, what do these things show? Do they take  
21 the asset and say how much the asset will be  
22 downgraded or down-valued?

23 A. No. It was summarize the current  
24 position using metrics within the credit space,  
25 such as DVOI, which is dollar value of a basis

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1 FELDER - HIGHLY CONFIDENTIAL  
2 businesses generated that did track the amount of  
3 risk appetite usage?

4 A. Yeah, I would think there would. It  
5 wasn't a metric that was -- it wasn't a metric  
6 within credit that the risk management folks  
7 focused on, because it didn't give, didn't give  
8 a -- it didn't give a real sense as to how the --  
9 that portfolio would -- those credit specific risk  
10 metrics were the more important risk metrics in  
11 managing the credit book.

12 Q. Focusing just on the credit business,  
13 which I take it you have a further understanding  
14 of than the business you were only in charge of  
15 for four and a half days.

16 A. Correct.

17 Q. Were you assigned a certain amount of  
18 risk appetite usage at any point in a fiscal year?

19 A. I would assume that there were limits.  
20 I don't recall being given a specific number.

21 Q. Do you recall ever being told you were  
22 over or under or comfortably within whatever your  
23 usage was?

24 A. Not specifically.

25 Q. Do you recall at any time any concern

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<p style="text-align: right;">Page 122</p> <p>1           <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 in any of the businesses that you bumped into</p> <p>3 about whether or not the business was within its</p> <p>4 risk appetite limits?</p> <p>5       A. I do recall Alex Kirk saying -- and I</p> <p>6 couldn't tell you when, this is going back</p> <p>7 pre-September, I do recall Alex saying that his</p> <p>8 business had to get risk appetite lower.</p> <p>9       Q. And which business would he have been</p> <p>10 talking about?</p> <p>11       A. This was when he was the co-COO of</p> <p>12 fixed income. So --</p> <p>13       Q. So it was the fixed income division</p> <p>14 that had to get limits lower?</p> <p>15       A. I recall him saying that.</p> <p>16       Q. Usage lower or limits lower?</p> <p>17       A. Risk appetite usage.</p> <p>18       Q. OK. Thank you. I don't have any</p> <p>19 further questions.</p> <p>20       MR. CARDEN: We have been admirably</p> <p>21 efficient, but I have a few more questions.</p> <p>22 Won't take long.</p> <p>23       -----</p> <p>24</p> <p>25</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 123</p> <p>1           <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 EXAMINATION BY</p> <p>3 MR. CARDEN:</p> <p>4       Q. The traders who are responsible for</p> <p>5 certain aspects of the fixed income portfolio are</p> <p>6 the ones who do the marks every night, correct?</p> <p>7       A. Correct.</p> <p>8       Q. How many traders, just roughly</p> <p>9 speaking, were there within the fixed income area</p> <p>10 in the days when you were the cohead, who would</p> <p>11 have prepared such marks?</p> <p>12       A. Oh, I don't know how many specific</p> <p>13 trade -- I know there were about 3,000 people in</p> <p>14 fixed income. And I think that the split was</p> <p>15 about a third, a third, a third, sales, trading,</p> <p>16 research, so I would give an estimate without real</p> <p>17 knowledge specifically of maybe about a thousand.</p> <p>18       Q. A lot of people?</p> <p>19       A. A significant number.</p> <p>20       Q. And those people, when they did their</p> <p>21 marks for the portfolios for which they were</p> <p>22 responsible, did they have a responsibility to</p> <p>23 provide those marks up to an immediate supervisor</p> <p>24 every day?</p> <p>25       Or said another way, how were they</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 124</p> <p>1           <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 input into the system?</p> <p>3       A. No, the traders input their own marks.</p> <p>4       Q. On the evening of Thursday, I know you</p> <p>5 don't recognize, or pardon me, don't recall having</p> <p>6 gone forth to get valuations.</p> <p>7       A. Right.</p> <p>8       Q. But had you done so and just don't</p> <p>9 remember, who would you have asked to provide the</p> <p>10 marks for the portions of the portfolio that were</p> <p>11 provided to you Thursday evening?</p> <p>12       A. I would -- if I had to ask that</p> <p>13 question, I probably would have asked someone like</p> <p>14 a Gilles in product control, because product</p> <p>15 control was responsible for month-end variance</p> <p>16 testing, so they had -- they could get all of the</p> <p>17 different marks all together in one spot. Each</p> <p>18 trader would only have their book. So the only</p> <p>19 place where you could go to get an aggregate list</p> <p>20 of marks would be out of product control.</p> <p>21       Q. That would only be on a once monthly</p> <p>22 basis, correct? You had to go back to the end of</p> <p>23 August, or is that done on a --</p> <p>24       A. Product control could get all the</p> <p>25 marks on any given day.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 125</p> <p>1           <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2       Q. So I know you, again, you don't</p> <p>3 remember, I'm just trying to get what the process</p> <p>4 would have been.</p> <p>5       When you're given -- if you were given</p> <p>6 the sheet that had the hundred largest positions</p> <p>7 in fixed income on the evening of Thursday or</p> <p>8 Friday morning, and you had to get fire sale marks</p> <p>9 for those positions, is it your testimony that you</p> <p>10 would have gone to Gilles?</p> <p>11       MR. STERN: Objection to the form.</p> <p>12       A. No. If things had already been marked</p> <p>13 and I was asked to get what are the marks, I would</p> <p>14 go to Gilles.</p> <p>15       Q. Fair enough.</p> <p>16       If you were asked to get fair sale</p> <p>17 marks for those same positions on late Thursday</p> <p>18 night or Friday morning, to whom would you have</p> <p>19 gone to get those fire sale marks?</p> <p>20       A. Within credit?</p> <p>21       Q. Yes.</p> <p>22       A. The people under me in credit would</p> <p>23 have been Fred Orlan, who ran the high-yield</p> <p>24 business. Within the investment grade business,</p> <p>25 it would have been Jason Quinn and Anthony</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

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1 FELDER - HIGHLY CONFIDENTIAL  
2 Bugliari.  
3 Within the CDO business it would have  
4 been Peter Hornick. Within the municipal business  
5 it would have been Jerry Rizzieri, and within  
6 emerging markets it would have been Mohammed  
7 Grimeh.  
8 Those would have been the heads of  
9 those businesses who would then, if they had to do  
10 that, go to the traders underneath them or desk  
11 heads underneath them to do that kind of a --  
12 Q. Is it possible they could have -- they  
13 would have known what the existing marks were  
14 already so they wouldn't have needed to go to  
15 product control?  
16 A. They wouldn't have needed to go to  
17 product control.  
18 Q. As to those aspects of the fixed  
19 income division that were not credit related --  
20 A. Right.  
21 Q. -- to whom would you have gone, if you  
22 know, to provide fire sale marks on that, those  
23 aspects or those assets in the fixed income  
24 division?  
25 A. I could just give you the heads of the  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 businesses.  
3 Q. OK.  
4 A. So Charlie Spero ran mortgages.  
5 Kaushik Amin ran rates, FX and commodities. John  
6 Coughlin was anything that was financing or short  
7 dated. Jim Murley would have been anything within  
8 the syndicate functions, which also included  
9 commercial paper.  
10 Let's see. FX, commodities --  
11 Mohammed Grimeh would have been emerging markets.  
12 And I guess Mark Walsh would have been commercial  
13 real estate.  
14 Q. Look back at Exhibit 2 for me for just  
15 a moment. I think we have already established, or  
16 in any event, there is some indication that this  
17 is the sheet of the 100 largest positions in fixed  
18 income that was discussed in the e-mail traffic on  
19 Thursday evening.  
20 MR. STERN: Objection to the form. I  
21 don't think any such thing has been  
22 established. I think the transcript will  
23 reflect Mr. Felder's uncertainty concerning  
24 this document and the categories within this  
25 document.  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 But if you have a question, go ahead.  
3 MR. CARDEN: I'm --  
4 MR. STERN: I just object to the  
5 statement and characterization of the  
6 testimony.  
7 MR. CARDEN: I think it is an accurate  
8 characterization, but I will eliminate it  
9 from the question so we won't have any  
10 problem with it.  
11 MR. STERN: Thank you.  
12 Q. Looking at Exhibit 2, Mr. Felder, had  
13 you wanted to go forward and you had this document  
14 in your possession, to provide fire sale  
15 valuations for these positions, to whom would you  
16 have gone?  
17 MR. STERN: Objection to the form.  
18 Q. Take a look at the positions, because  
19 they may or may not all be in the areas you have  
20 already previously described.  
21 A. That list of people that I gave you  
22 would -- I believe that would incorporate --  
23 Q. The difference between my question  
24 is --  
25 MR. STERN: Wait, incorporate what? I  
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1 FELDER - HIGHLY CONFIDENTIAL  
2 don't hear a complete answer.  
3 A. I think that list of people would have  
4 had a responsibility for -- assuming that these  
5 are positions from within fixed income at Lehman,  
6 that group of people would have had responsibility  
7 for the ultimate people that would have marked  
8 these securities.  
9 Q. On a fire sale basis?  
10 MR. STERN: Objection to the form.  
11 A. They would -- those would be the  
12 people that if they were asked to do that, would  
13 have the knowledge level of the security to do  
14 that.  
15 Q. OK. Let me make certain that we are  
16 understanding one another. Had you been given  
17 this list on Thursday, September 18, in the  
18 evening or early Friday morning on September 19  
19 and been asked to provide fire sale prices for  
20 those positions which were in fixed income, the  
21 people to whom you would have gone would have been  
22 those which you previously described as in charge  
23 of those specific areas, correct?  
24 A. Correct.  
25 Q. All right. Do you have -- strike  
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<p style="text-align: right;">Page 130</p> <p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 that.</p> <p>3 Would there be any way that you could</p> <p>4 have avoided going to each and every one of them</p> <p>5 in order to make the process more efficient? In</p> <p>6 other words, is there some one person above all of</p> <p>7 them to whom you might have gone to say get this</p> <p>8 done and that they in turn would have gone to the</p> <p>9 collection of people you described? Or is that</p> <p>10 person you?</p> <p>11 A. Can you repeat the question.</p> <p>12 Q. Yeah, I am happy to rephrase the</p> <p>13 question.</p> <p>14 I know you don't have a recollection</p> <p>15 of this, I am simply trying to determine what you</p> <p>16 would have done if it in fact happened.</p> <p>17 You were asked to give fire sale</p> <p>18 prices for the securities in Exhibit 2. You have</p> <p>19 got to find the people who are in a position to do</p> <p>20 it. You have described to me the people in each</p> <p>21 of the various asset classes who are in a position</p> <p>22 to talk to the relevant traders and get those fire</p> <p>23 sale marks, correct?</p> <p>24 A. Correct.</p> <p>25 MR. STERN: Objection to the form.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 131</p> <p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 Wait. Objection to the form, because the</p> <p>3 question incorporates all kinds of</p> <p>4 statements.</p> <p>5 MR. CARDEN: That's fine. I am happy</p> <p>6 with the question. You can object to the</p> <p>7 form.</p> <p>8 Q. So the question I have for you now is,</p> <p>9 is there --</p> <p>10 MR. STERN: The point is if you are</p> <p>11 creating a misleading record, I just can't</p> <p>12 let that stand. So what exactly are you</p> <p>13 asking?</p> <p>14 MR. CARDEN: We have done beautifully</p> <p>15 this far. I am perfectly happy with the</p> <p>16 answer. I am just trying to identify people</p> <p>17 who are involved. Let's just move on. I am</p> <p>18 happy to stand by the question. I have</p> <p>19 reformulated questions in the past when I</p> <p>20 thought you were correct. I thought you</p> <p>21 were mistaken about this. I don't really</p> <p>22 care about this.</p> <p>23 Q. What I really want to know,</p> <p>24 Mr. Felder, is, if you had chosen to do so and</p> <p>25 were asked to provide fire sale prices for a wide</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 132</p> <p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 collection of positions in the fixed income area,</p> <p>3 is there some one person you could have called as</p> <p>4 opposed to contacting all the people that you have</p> <p>5 described?</p> <p>6 A. I could have gone to one person who</p> <p>7 would have gone to those people. So Mike Gelband</p> <p>8 would know all of those people, Alex Kirk would</p> <p>9 know all of those people.</p> <p>10 Q. But at the end of the day, what you</p> <p>11 are saying to me, in order to provide the fire</p> <p>12 sale prices, you would have had to have gone back</p> <p>13 to the people that you have identified to get</p> <p>14 those prices, correct? Somebody would have had to</p> <p>15 have gone to them?</p> <p>16 A. That would be the process I would go</p> <p>17 through.</p> <p>18 Q. That's what I am asking for. OK.</p> <p>19 And it is your testimony you have no</p> <p>20 recollection of having done that on Thursday night</p> <p>21 or Friday morning?</p> <p>22 A. I have no recollection of having done</p> <p>23 that.</p> <p>24 Q. OK, thank you, sir.</p> <p>25</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 133</p> <p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 EXAMINATION BY</p> <p>3 MS. TAGGART:</p> <p>4 Q. I will ask a couple of follow-up</p> <p>5 questions to this.</p> <p>6 When you talk about the traders are</p> <p>7 the ones who put together marks, do they do that</p> <p>8 on a routine basis?</p> <p>9 A. They mark their books every day.</p> <p>10 Q. And what's involved in marking the</p> <p>11 books every day?</p> <p>12 A. For what type of a trader?</p> <p>13 Q. It varies from trade to trade? Let me</p> <p>14 ask this: Where do they put the information on a</p> <p>15 daily basis, or did they at this time?</p> <p>16 A. Whatever the front office system of</p> <p>17 that asset class is would be where the marks would</p> <p>18 be put in.</p> <p>19 Q. When you say a front office system,</p> <p>20 are you talking about a computerized database?</p> <p>21 A. An application. There were different</p> <p>22 applications for different products, that would</p> <p>23 all feed into the middle office or the back office</p> <p>24 of the firm. So depending on what the product</p> <p>25 was, whatever system that was used would be the --</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

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1 FELDER - HIGHLY CONFIDENTIAL  
2 would be -- that is where they would put the  
3 prices into.

4 Q. When you talk about a system, a  
5 computerized system?

6 A. Computerized system.

7 Q. So every day traders would be entering  
8 marks for the securities that they were involved  
9 in on some sort of computer system; is that  
10 correct?

11 A. To my knowledge, that -- a computer  
12 system was used in the products I knew.

13 Q. Did you ever personally access on a  
14 computer system daily marks?

15 A. In risk systems, you can see -- you  
16 can see the marks of securities.

17 Q. How do you see them?

18 A. On the computer screen.

19 Q. Did the computer screen -- is there a  
20 database that you remember, a name of a database  
21 where you personally could go and access daily  
22 marks?

23 A. In -- within credit, our main risk  
24 system was called ICE, I-C-E. And that  
25 consolidated the derivative systems and the cash

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1 FELDER - HIGHLY CONFIDENTIAL  
2 systems.

3 Q. Did marks ever change from the close  
4 of the market on Friday to the opening of the  
5 market on Mondays?

6 A. From the close on a Friday to the open  
7 on a Monday?

8 Q. Yes.

9 A. I don't think you could do -- I don't  
10 think the system would let you -- you can get an  
11 end-of-day mark, and then I don't think you could  
12 go in and change -- as far as I know, you couldn't  
13 go in and change a mark once it was committed for  
14 that day until the mark for the next day.

15 Q. In particular on the weekend of  
16 September 19 -- from the close of the market on  
17 September 19 to the opening of the market on  
18 September 22, would there be any reason for any of  
19 the marks from the credit business to change over  
20 that weekend?

21 A. Not that I would be aware of.

22 Q. OK, that is all.

23 ----

24

25

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1 FELDER - HIGHLY CONFIDENTIAL  
2 EXAMINATION BY  
3 MR. BYMAN:

4 Q. I apologize. Every time somebody asks  
5 a question, somebody else thinks of another  
6 question.

7 When the traders do their marks, and I  
8 understand, I think, that process, is there any  
9 other group such as the product control group that  
10 does an independent analysis of where they think  
11 certain assets should be valued?

12 A. That would be done monthly, and there  
13 would be variance reports. I only know this  
14 specifically within credit because I hadn't gone  
15 through that process in the other asset classes.  
16 So within credit, we had a monthly variance  
17 meeting with product control to go through any  
18 positions that they felt -- they got external data  
19 from third parties and they compared the marks to  
20 that external data, and then the desk heads would  
21 sit down with product control, and then ultimately  
22 I would sit down to make sure that the business  
23 was properly marked from the product control --  
24 from a -- essentially a third party's perspective.

25 Q. So I want to make sure that I

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1 FELDER - HIGHLY CONFIDENTIAL  
2 understand the process then. So on a daily basis,  
3 the traders would mark the assets that they were  
4 responsible for. On a monthly basis, product  
5 control would do its own evaluation. To the  
6 extent there was a variance, it would escalate to  
7 you, and you would decide who was right or whether  
8 it was someplace in the middle?

9 A. No. The product controllers  
10 ultimately had the -- you couldn't overrule a  
11 product controller because they had the  
12 third-party data. So if they said this, this is  
13 off, then the book just got marked down by where  
14 it was.

15 If there was a situation where -- if  
16 there was a situation where there was other data  
17 in the market that the product controllers didn't  
18 have, for example, then --

19 Q. You would reason with them, but you  
20 couldn't overrule them?

21 A. Right. That was my experience within  
22 credit.

23 Q. And so far as you know, is that the  
24 same system that other businesses use within  
25 Lehman?

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<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 A. I don't know.</p> <p>3 Q. How close to this monthly review by</p> <p>4 the product controllers would you do your sit down</p> <p>5 to look at the variance reports? Would that be</p> <p>6 done within a day or two?</p> <p>7 A. It would usually take them a week or</p> <p>8 two to put it all together.</p> <p>9 MR. BYMAN: OK, thanks.</p> <p>10 MS. TAGGART: I do have another.</p> <p>11 EXAMINATION BY</p> <p>12 MS. TAGGART:</p> <p>13 Q. Just who are the product controllers</p> <p>14 that were at Lehman doing this process, the</p> <p>15 monthly evaluation, prior to the sale? That you</p> <p>16 know of.</p> <p>17 A. I just know Gilles within credit.</p> <p>18 There is a whole product control function, and</p> <p>19 they were set up by asset class, so I would assume</p> <p>20 that there are product controllers for each asset</p> <p>21 class.</p> <p>22 Q. OK.</p> <p>23 MR. CARDEN: We have given you the</p> <p>24 gift of time, Mr. Felder.</p> <p>25 THE WITNESS: I sincerely appreciate</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 it.</p> <p>3 (Time Noted: 1:05 p.m.)</p> <p>4</p> <p>5</p> <p>6 <b>ERIC JONATHAN FELDER</b></p> <p>7</p> <p>8 Subscribed and sworn to</p> <p>9 before me this day</p> <p>10 of July, 2009.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 E. Felder Mr. Carden 10, 123</p> <p>5 Ms. Taggart 104, 133, 138</p> <p>6 Mr. Byman 118, 136</p> <p>7 EXHIBITS</p> <p>8 Exhibit No. Marked</p> <p>9 Exhibit 1 asset purchase agreement dated 47</p> <p>September 16, 2008</p> <p>10 Exhibit 2 e-mail with attachment dated 53</p> <p>September 18, 2008</p> <p>11 Exhibit 3 document Bates stamped 1029780 57</p> <p>Exhibit 4 e-mail dated September 19, 75</p> <p>2008 at 1:30 p.m.</p> <p>12 Exhibit 5 e-mail dated September 19, 75</p> <p>2008 at 10:34 a.m.</p> <p>13 Exhibit 6 document Bates stamped 76</p> <p>10242982</p> <p>14 Exhibit 7 document Bates stamped 81</p> <p>BCI-EX70957</p> <p>15 Exhibit 8 e-mail September 19, 2008 at 82</p> <p>10:51 a.m. with attachment</p> <p>16 Exhibit 9 e-mail dated September 19, 83</p> <p>2008 at 2:06 p.m. with</p> <p>attachment</p> <p>17 Exhibit 10 e-mail dated September 17, 91</p> <p>2008 at 12:34 p.m.</p> <p>19 Exhibit 11 document Bates stamped 97</p> <p>10284073</p> <p>20 Exhibit 12 three-page letter dated 98</p> <p>September 18, 2008</p> <p>21 Exhibit 13 Letter dated September 21, 99</p> <p>2008</p> <p>22 Exhibit 14 document Bates stamped 101</p> <p>10292661</p> <p>23 Exhibit 15 document Bates stamped 109</p> <p>BCI-EX30865 with attachment</p> <p>24 Exhibit 16 e-mail dated September 18, 111</p> <p>2008 at 12:23 p.m.</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 <b>FELDER - HIGHLY CONFIDENTIAL</b></p> <p>2</p> <p>3 <b>CERTIFICATE</b></p> <p>4 <b>STATE OF NEW YORK )</b></p> <p>5 <b>)ss:</b></p> <p>6 <b>COUNTY OF NEW YORK)</b></p> <p>7 I, MARY F. BOWMAN, a Registered</p> <p>8 Professional Reporter, Certified Realtime</p> <p>9 Reporter, and Notary Public within and for</p> <p>10 the State of New York, do hereby certify:</p> <p>11 That ERIC JONATHAN FELDER, the witness</p> <p>12 whose deposition is hereinbefore set forth,</p> <p>13 was duly sworn by me and that such</p> <p>14 deposition is a true record of the testimony</p> <p>15 given by such witness.</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties to this action</p> <p>18 by blood or marriage and that I am in no way</p> <p>19 interested in the outcome of this matter.</p> <p>20 In witness whereof, I have hereunto</p> <p>21 set my hand this 31st day of July, 2009.</p> <p>22</p> <p>23 <b>MARY F. BOWMAN, RPR, CRR</b></p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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\*\*\*ERRATA SHEET\*\*\*

NAME OF CASE: In Re: Lehman Brothers

DATE OF DEPOSITION: 7/31/09

NAME OF WITNESS: ERIC JONATHAN FELDER

Reason codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

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ERIC JONATHAN FELDER

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# BCI EXHIBIT

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: )  
 ) Chapter 11  
LEHMAN BROTHERS ) Case No. 08-13555 (JMP)  
 )  
HOLDINGS, INC., et al., )  
 )  
Debtors. )  
-----)

HIGHLY CONFIDENTIAL DEPOSITION OF  
DANIEL JOSEPH FLEMING  
New York, New York  
Friday, August 28, 2009

Reported by:  
KRISTIN KOCH, RPR, RMR, CRR, CLR  
JOB NO. 24123

Confidential

Page 2	Page 3
<p>1 2 3 4 August 28, 2009 5 9:28 a.m. 6 7 8 Highly Confidential Deposition of 9 DANIEL JOSEPH FLEMING, held at the offices 10 of JONES DAY, LLP, 222 East 41st Street, 11 New York, New York, before Kristin Koch, a 12 Registered Professional Reporter, 13 Registered Merit Reporter, Certified 14 Realtime Reporter, Certified Livenote 15 Reporter and Notary Public of the State of 16 New York. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017-6702 9 BY: BART GREEN, ESQ. 10 KELLY A. CARRERO, ESQ. 11 12 13 BOIES, SCHILLER &amp; FLEXNER, LLP 14 Attorneys for Barclays and Daniel Joseph 15 Fleming 16 333 Main Street 17 Armonk, New York 10504 18 BY: CHRISTOPHER M. GREEN, ESQ. 19 20 21 QUINN EMANUEL URQUHART OLIVER &amp; HEDGES LLP 22 Attorneys for Creditors Committee 23 865 South Figueroa Street - 10th floor 24 Los Angeles, California 90017 25 BY: TYLER WHITMER, ESQ. (Via telephone)</p>
Page 4	Page 5
<p>1 2 APPEARANCES: (Continued) 3 4 5 JENNER &amp; BLOCK LLP 6 Attorneys for Examiner 7 330 North Wabash Avenue 8 Chicago, Illinois 60611-7603 9 BY: VINCENT LAZAR, ESQ. 10 11 12 HUGHES HUBBARD &amp; REED LLP 13 Attorneys for SIPA Trustee 14 One Battery Park Plaza 15 New York, New York 10004-1482 16 BY: SETH D. ROTHMAN, ESQ. 17 AMINA HASSAN, ESQ. 18 19 20 ALSO PRESENT: 21 22 PHIL KRUSE, Alvarez &amp; Marsal 23 24 25</p>	<p>1 2 IT IS HEREBY STIPULATED AND AGREED 3 by and between the attorneys for the 4 respective parties herein, that filing and 5 sealing be and the same are hereby waived. 6 IT IS FURTHER STIPULATED AND AGREED 7 that all objections, except as to the form 8 of the question, shall be reserved to the 9 time of the trial. 10 IT IS FURTHER STIPULATED AND AGREED 11 that the within deposition may be sworn to 12 and signed before any officer authorized 13 to administer an oath, with the same 14 force and effect as if signed and sworn 15 to before the Court. 16 17 18 19 20 - oOo - 21 22 23 24 25</p>

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<p>1 2 DANIEL JOSEPH FLEMING, 3 called as a witness, having been duly sworn 4 by a Notary Public, was examined and 5 testified as follows: 6 EXAMINATION BY 7 MS. CARRERO: 8 Q. Good morning, Mr. Fleming. My name 9 is Kelly Carrero. I am with Jones Day. We are 10 special counsel to the estate of Lehman 11 Brothers Holding, Inc. With me is my 12 colleague, Bart Green, and I will have everyone 13 else in the room introduce themselves on the 14 record. 15 MR. ROTHMAN: Seth Rothman, Hughes 16 Hubbard &amp; Reed. We represent the SIPA 17 trustee. 18 MS. HASSAN: Amina Hassan, Hughes, 19 Hubbard &amp; Reed. 20 MR. LAZAR: Vince Lazar from 21 Jenner &amp; Block. We represent the Examiner 22 appointed in the Lehman Brothers case. 23 MR. KRUSE: Phil Kruse with 24 Alvarez &amp; Marsal on behalf of LBHI. 25 MR. C. GREEN: Christopher Green</p>	<p>1 Fleming - Highly Confidential 2 with Boies, Schiller &amp; Flexner on behalf of 3 Barclays Capital and the witness. 4 BY MS. CARRERO: 5 Q. Mr. Fleming, have you been deposed 6 before? 7 A. No. 8 Q. Then I will go over some background 9 rules, housekeeping. It will go easier and 10 smoother if when I ask a question you let me 11 finish the question before you start your 12 response and if you will give verbal answers 13 rather than any nods of the head so that the 14 court reporter can take down every word that 15 you say. 16 If you need to take a break, if you 17 can wait until we find a reasonable place to 18 stop, just let me know, let your counsel know 19 and we will work with each other. 20 A. Okay. 21 Q. So if we could start with some 22 background information in terms of education, 23 work experience. Let's start with your 24 educational experience. 25 A. Education, I attended the University</p>
Page 8	Page 9
<p>1 Fleming - Highly Confidential 2 of Hartford and St. John's University for 3 approximately two and a half years. Did not 4 graduate. In terms of work experience, would 5 you like me to start backwards? 6 Q. Start with your earliest work 7 experience after you finished at University of 8 Hartford and St. John's. 9 A. First employment was with EF Hutton 10 working in the mortgage-backed security 11 accounting group. 12 I subsequently was hired by Shearson 13 Lehman Hutton, moved into their regulatory 14 group for a short period. 15 I subsequently left and joined, I 16 believe, what was Chemical Bank, again, working 17 in mortgage-backed security accounting. 18 Subsequent to that I left the 19 industry and worked out of industry as a 20 controller for a wholesale distributor out on 21 Long Island. 22 Then I came back into the industry. 23 I worked for a firm named East Bridge Capital 24 and East Bridge Asset Management, which was -- 25 East Bridge Capital was a primary dealer owned</p>	<p>1 Fleming - Highly Confidential 2 by Nippon Credit Bank. In that space I worked 3 in accounting for both the broker/dealer and 4 for the asset management business. 5 Subsequent to that I worked at DE 6 Shaw for a short while in their operations 7 accounting group. 8 And then I moved over to Lehman 9 Brothers in and around 1998 where I joined the 10 cash and collateral management team in New York 11 reporting in to at the time the U.S. head of 12 cash and collateral management. 13 I subsequently took over the role of 14 U.S. head of cash and collateral management. 15 Subsequent to that I was -- 16 Q. I'm sorry, if I could stop you 17 there. What year are we talking that you 18 became U.S. head of cash and collateral 19 management? 20 A. 2001, 2002, thereabouts. 21 Q. And when you began at Lehman in 1998 22 in the cash and collateral group, was that part 23 of the treasury group? 24 A. Yes. 25 Q. And who did you report to starting</p>

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Page 10	Page 11
<p>1 Fleming - Highly Confidential 2 in 1998? 3 A. I reported in to an individual by 4 the name of Robert Murack. 5 Q. And was there a time when that 6 changed and you started to report to someone 7 else or did you report -- 8 A. Yes. Robert left the organization. 9 I was then reporting in to an individual by the 10 name of Kathy Bopp Flynn, who was in charge of 11 cash and collateral management, as well as 12 network management and possibly some other 13 functions. I don't recall. She was a direct 14 report to the treasurer at the time who was 15 Daniel Minerva. Kathy Bopp Flynn moved into a 16 new role at some point after I was reporting in 17 to her. A new individual by the name of Robert 18 van Zwieten was hired. Robert was responsible 19 for global cash management as well as some 20 other functions. Upon Robert -- 21 Q. Go ahead. Finish. 22 A. Upon Robert's departure -- I don't 23 recall exactly when that was, it was probably 24 2005, 2006. 2006. At that time I was named 25 the global head of cash and collateral</p>	<p>1 Fleming - Highly Confidential 2 management reporting in to Ian Lowitt, who at 3 the time was the treasurer. 4 Q. So if I can just step back to 5 clarify, in 2001, 2002 you became the U.S. head 6 of cash and collateral management and then in 7 2006 you became the global head of cash and 8 collateral management; is that correct? 9 A. That sounds approximately correct, 10 yes. 11 Q. And at the time that you were the 12 U.S. head of cash and collateral management, 13 were you reporting to the then global head of 14 cash and collateral management or directly to 15 the treasurer? 16 MR. C. GREEN: Object to form. 17 You can answer. Go right ahead. 18 A. There was a change in organizational 19 structure during my time at Lehman Brothers. 20 When I first joined, there was no global head. 21 Each region ran their own treasury group. At 22 some point, I don't exactly remember when that 23 was, they created global heads for each 24 function within treasury. 25 Q. So to clarify, when you were going</p>
Page 12	Page 13
<p>1 Fleming - Highly Confidential 2 through the people you reported to prior to 3 becoming global head, Kathy Bopp Flynn, at the 4 time that you reported to her, what was her 5 title? 6 A. She was senior vice president. That 7 was her official title. 8 Q. Let's move on. Let's go back to you 9 became global head of cash and collateral 10 management in 2006. What were your duties as 11 global head? 12 A. Most of my time was spent focusing 13 on the U.S. operations of Lehman Brothers. I 14 did have global responsibility. In that 15 capacity I was responsible for overseeing 16 strategic direction and objectives of the team, 17 but each of my directs -- I had a direct in 18 Europe and a direct in Asia -- reported in to 19 the treasurer of those respective regions and 20 the day-to-day operations were managed within 21 the region. 22 Q. And did you have direct reports in 23 the U.S.? 24 A. Yes, I did. 25 Q. Could you name those individuals?</p>	<p>1 Fleming - Highly Confidential 2 MR. C. GREEN: I'm sorry, at the 3 time he became global head or throughout 4 the period of time that he was global head? 5 Q. Why don't we say at the time you 6 became global head, how many direct reports did 7 you have? 8 A. I don't really recall. It could 9 have been three. I don't remember exactly what 10 it was. 11 Q. Did it change substantially over 12 time? 13 A. I think towards the end there were 14 two direct reports in the U.S. 15 Q. And at the end who were those two 16 direct reports? 17 A. Craig Jones and Mandeep Seekond. 18 Q. Could you spell the last name? 19 A. S-E-E-K-O-N-D. 20 Q. Were you and your two direct 21 reports, Craig Jones and Mandeep Seekond, the 22 only members of the U.S. cash and collateral 23 management team? 24 A. No. 25 Q. Who else would have comprised</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 membership in that team in the end, around</p> <p>3 September 2008?</p> <p>4 A. There were approximately thirty</p> <p>5 people in the U.S.</p> <p>6 Q. Could you break down those thirty</p> <p>7 people in terms of function or sub-groups?</p> <p>8 A. Yes. There was one group of</p> <p>9 individuals that we described their function as</p> <p>10 cash control.</p> <p>11 Q. Could you explain what cash control</p> <p>12 means?</p> <p>13 A. These individuals were responsible</p> <p>14 for managing what we call the queues, the</p> <p>15 payment queues, which is the release of payment</p> <p>16 messages out to banks at certain times during</p> <p>17 the day. They were responsible for the</p> <p>18 investigation if there was any delay in the</p> <p>19 transfer of those messages. They were</p> <p>20 responsible for viewing and applying incoming</p> <p>21 money that were received into our bank</p> <p>22 accounts, and they were responsible for</p> <p>23 investigations as it relates to payments made</p> <p>24 in error, funds received in error, those types</p> <p>25 of things. That's generally what they were</p>	<p>1 Fleming - Highly Confidential</p> <p>2 responsible for.</p> <p>3 Q. And what would be the next sub-group</p> <p>4 within the cash and collateral management</p> <p>5 group?</p> <p>6 A. The funding team.</p> <p>7 Q. And what did the funding team do?</p> <p>8 A. The funding team was responsible for</p> <p>9 projecting cash and collateral availability at</p> <p>10 the beginning of the day, providing front</p> <p>11 office traders with some indication of assets</p> <p>12 available to be financed, monitoring settlement</p> <p>13 activity throughout the course of the day, both</p> <p>14 cash settlements and security settlements,</p> <p>15 liaising with the trading desk to advise them</p> <p>16 of events that would occur throughout the</p> <p>17 course of the day that they may not have</p> <p>18 complete transparency into. Cash</p> <p>19 concentration, consolidating cash amongst a</p> <p>20 wide network of bank accounts for purposes of</p> <p>21 investment. We did not execute any</p> <p>22 investments. That was a front office function.</p> <p>23 You know, and balancing our fund position on a</p> <p>24 daily basis.</p> <p>25 Q. Are there any other sub-groups</p>
Page 16	Page 17
<p>1 Fleming - Highly Confidential</p> <p>2 within the cash and collateral management</p> <p>3 group?</p> <p>4 A. There was another team that we</p> <p>5 defined as the MIS and analytics team,</p> <p>6 production of MIS information related to bank</p> <p>7 balances, funding activity, collateral</p> <p>8 position, residual collateral positions at the</p> <p>9 end of the day.</p> <p>10 Q. Could you explain to me what MIS</p> <p>11 stands for?</p> <p>12 A. MIS is an acronym that's widely used</p> <p>13 in our industry for management information</p> <p>14 systems is what the acronym stands for, which</p> <p>15 is reporting basic information.</p> <p>16 Q. Is there anything else that the MIS</p> <p>17 and analytics team did?</p> <p>18 A. Post-settlement reconciliation,</p> <p>19 trying to understand, you know, why certain</p> <p>20 things happened throughout the course of the</p> <p>21 day, why we ended up at the end of the day</p> <p>22 where we did. They would work on special</p> <p>23 projects, you know, and ad-hoc analysis as</p> <p>24 required.</p> <p>25 Q. Are there any other groups within</p>	<p>1 Fleming - Highly Confidential</p> <p>2 the cash and collateral management group?</p> <p>3 A. Yes. That was all -- what I</p> <p>4 described there was Craig Jones'</p> <p>5 responsibility.</p> <p>6 Q. And did you also have responsibility</p> <p>7 for this group as global head?</p> <p>8 A. I don't understand the question.</p> <p>9 Q. Did you also have responsibility for</p> <p>10 the MIS and analytics team as global head or</p> <p>11 did Craig Jones alone?</p> <p>12 MR. C. GREEN: Object to form.</p> <p>13 MS. CARRERO: You can answer.</p> <p>14 A. It ultimately rolled up to me.</p> <p>15 Q. Are there any other sub-groups</p> <p>16 within the cash and collateral management</p> <p>17 group?</p> <p>18 A. There is the role that Mandeep</p> <p>19 Seekond performed.</p> <p>20 Q. And what was that role?</p> <p>21 A. That was -- there were two roles.</p> <p>22 One was he was responsible for the build and</p> <p>23 deployment of a global cash management and</p> <p>24 funding application. Second is he was</p> <p>25 responsible for the treasury technology budget</p>

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<p>1 Fleming - Highly Confidential 2 and enhancement process. 3 Q. Is that it? 4 A. Uh-huh. 5 Q. Are there any other sub-groups 6 within the cash and collateral management 7 group? 8 A. No. 9 Q. And you had ultimate responsibility 10 for all four teams within the cash and 11 collateral management group? 12 MR. C. GREEN: Object to form. I'm 13 not sure he has testified they were four 14 teams. 15 MS. CARRERO: You could answer, but 16 just for the record, I just want to -- 17 withdrawn. 18 Q. Are the four sub-groups or teams 19 within the cash and collateral management group 20 cash control funding team, MIS and analytics 21 team, and Mandeep's two roles, would that 22 accurately sum up the functions of the cash and 23 collateral management group? 24 A. In the U.S., yes, that would 25 accurately describe the functions that were</p>	<p>1 Fleming - Highly Confidential 2 performed. 3 Q. And you had ultimate responsibility 4 for those functions? 5 A. Yes. 6 Q. Were any of the four functions or 7 teams your specialty or your personal 8 responsibility? 9 MR. C. GREEN: Object to form. 10 A. I'm not sure I fully understand what 11 you are trying to -- 12 Q. Sure. Let me rephrase. 13 On a day-to-day basis were any of 14 these four functions or teams where you spent 15 the majority of your time? 16 A. It would depend on the time or the 17 situation at hand. There were certainly 18 periods of time where I spent, you know, 19 focused more attention, spent more time with 20 different groups. So if it was -- if we were, 21 you know, rolling out a technology solution, 22 you know, and there was a cut-over on the 23 weekend that week, you know, I was probably 24 spending more time with Mandeep and his group. 25 If there was some issue, you know, with funding</p>
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<p>1 Fleming - Highly Confidential 2 that caused, you know, a funding problem, some 3 amount of inefficiency or something, I may be 4 spending more time with the funding team. If 5 audit is in and they are focusing on, you know, 6 SOX reviews for payment, you know, release, I 7 might be spending more time. So it really 8 depended on the situation. 9 Q. Historically or -- scratch that. 10 Prior to becoming global head, was 11 your experience with one of these teams greater 12 than with others or did you have experience 13 with all of them? 14 MR. C. GREEN: Object to form. 15 MS. CARRERO: You can answer. 16 MR. C. GREEN: You can go ahead and 17 answer, if you understand the question. 18 A. I don't think I had more experience 19 with one over the other. 20 Q. You had worked at one point or 21 another in all four functions or with all four 22 teams? 23 MR. C. GREEN: Object to form. 24 A. If you look at my prior experience, 25 it does -- it is not what I was doing at Lehman</p>	<p>1 Fleming - Highly Confidential 2 Brothers. It was a different type of function. 3 However, I had experience working on 4 technology. I had experience working with 5 financing traders. You know, so some of the 6 experience I had was applicable to the role at 7 Lehman, but I did not have extensive and 8 prolonged experience in the field of treasury 9 operations prior to joining Lehman Brothers. 10 Q. And could you explain to me how the 11 cash and collateral management group fits 12 within the larger treasury group? 13 A. At what point? 14 Q. Let's say September of 2008. 15 A. The global head of cash and 16 collateral management reported in to the global 17 treasurer. 18 Q. The global treasurer at the time was 19 Paolo Tonucci; is that correct? 20 A. 2008, yes. 21 Q. In terms of other groups within 22 treasury, what was cash and collateral 23 management's function versus other groups 24 within the treasury department? 25 MR. C. GREEN: Object to form.</p>

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Do you understand the question?

A. I'm not sure I completely understand.

Q. How many other groups are there within the treasury group?

MR. C. GREEN: This is as of September 2008?

MS. CARRERO: As of September 2008.

A. I will list them for you. There was the network management team. There was the asset and liability management team. There was the interest control team. There was the FP&A, financial planning and analysis team, and there was, I believe, the treasury funding team, I believe, was a direct report into Paolo as well.

Q. And did the cash and collateral group work with all other groups within treasury?

MR. C. GREEN: Object to form.

A. There was interaction with, you know, each one of those teams at certain points. Some groups more than others.

Q. For instance, what sort of

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interaction would there have been between the cash and collateral group and the treasury funding group within treasury?

MR. C. GREEN: As of September 2008?

MS. CARRERO: Yes, as of September 2008.

A. There was a close working relationship on a day-to-day basis between the cash and collateral management group, which is -- let's define it as a back office function, and the treasury funding desk, which was a front office function, both of which were dealing with similar, if not the same, information.

Q. When you say they are dealing with the same information, could you expand upon that?

A. The cash and collateral management funding team supported the treasury funding desk in terms of providing traders with information to allow them to perform their functions.

Q. What sort of information would they provide?

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MR. C. GREEN: Object to form. You mean the cash and collateral team would provide?

MS. CARRERO: Yes.

Q. What information would the cash and collateral group supply to the treasury and funding group?

A. Cash positions, real-time balances and other settlement activity that could ultimately affect the cash position for the treasury funding desk.

Q. Going back to the functions of the cash and collateral group, would that fall within the funding team?

MR. C. GREEN: Object to form.

Q. Would the funding team within the cash and collateral group be the team to supply the treasury funding desk with the information that you listed?

A. Yes.

Q. Would the cash and collateral team also supply similar information to other trading desks within Lehman?

MR. C. GREEN: Object to form.

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You can answer, if you understand the question. If you don't, you should ask her to clarify the question. I am just objecting for the record.

A. Can you restate, say it again, repeat it.

Q. Let me rephrase that for you.

The sort of information that the cash and collateral group is supplying to the treasury funding team, would they supply similar information to any other desks within Lehman?

A. They would provide information to what's described as or labeled as the repo desk which resided in the fixed income business front office at Lehman. It was not the same information. It differed than the information provided to the treasury desk. One could describe it as similar type of information, but it was not the same.

Q. Let's start with how the information differs between the treasury funding desk and the repo desk.

MR. C. GREEN: Is there a question?



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<p>1 Fleming - Highly Confidential</p> <p>2 Q. How does the information differ</p> <p>3 between what's supplied to the treasury funding</p> <p>4 desk and the repo desk?</p> <p>5 A. First, we could start by the legal</p> <p>6 entity dynamics. The treasury funding desk was</p> <p>7 managing the cash of the holding company, LBHI,</p> <p>8 so the information that was communicated to the</p> <p>9 treasury funding desk was -- had more to do</p> <p>10 with cash and intercompany activity and, you</p> <p>11 know, deposits, commercial paper issuance,</p> <p>12 things of that nature. The information</p> <p>13 provided to the repo desk was largely related</p> <p>14 to repo transactions and the underlying assets</p> <p>15 supporting those repo transactions, which</p> <p>16 primarily would consist of fixed income assets.</p> <p>17 Q. Would the treasury funding desk also</p> <p>18 transact repos of some sort similar to how the</p> <p>19 repo desk would?</p> <p>20 MR. C. GREEN: Object to form.</p> <p>21 Q. Let me state it simpler. Do both</p> <p>22 desks, both the treasury funding desk and the</p> <p>23 repo desk, both perform repos?</p> <p>24 MR. C. GREEN: Object to form.</p> <p>25 A. I think there is a lot of detail</p>	<p>1 Fleming - Highly Confidential</p> <p>2 behind that question, so I don't think I can</p> <p>3 give you an answer to that. My understanding</p> <p>4 is that the repo desk was responsible for</p> <p>5 trading, repo trading, and that the treasury</p> <p>6 funding desk was not. Now, there were,</p> <p>7 however, what I believe was repo transactions</p> <p>8 between the treasury funding desk and the repo</p> <p>9 desk as a form or a means of investing holding</p> <p>10 company cash. Let me clarify that that was an</p> <p>11 internal transaction and I do not know whether</p> <p>12 that was legally a repo under, you know, repo</p> <p>13 guidelines and legal documentation. I know</p> <p>14 that it was executed as a repo, but I cannot</p> <p>15 tell you whether it was truly, in fact, a repo</p> <p>16 transaction.</p> <p>17 Q. And in that situation, would that be</p> <p>18 what's known as a reversed repo where the</p> <p>19 treasury funding desk would give cash to the</p> <p>20 repo desk and the repo desk would give</p> <p>21 securities, pledge securities to the treasury</p> <p>22 funding desk?</p> <p>23 MR. C. GREEN: Object to form.</p> <p>24 Assumes facts not in evidence.</p> <p>25 I am just stating an objection for</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 the record. You can go ahead and answer</p> <p>3 the question, if you understand the</p> <p>4 question. If you don't, you should ask her</p> <p>5 to rephrase the question.</p> <p>6 A. So someone has described to you a</p> <p>7 transaction between the repo desk and the</p> <p>8 treasury funding desk. Any repo transaction</p> <p>9 has both the lender and the borrower. The</p> <p>10 lender of cash is executing a reverse repo and</p> <p>11 the borrower of cash is executing a repo</p> <p>12 transaction. It's the same transaction. It's</p> <p>13 just two sides of the same transaction. So in</p> <p>14 the case where LBHI was investing its cash in</p> <p>15 fixed income assets, it would be doing so in</p> <p>16 the form of a reverse repo.</p> <p>17 Q. And when the securities under that</p> <p>18 scenario were pledged to the treasury funding</p> <p>19 desk, what would the treasury funding desk do</p> <p>20 with them?</p> <p>21 A. It is my understanding that the</p> <p>22 treasury desk was investing their cash and that</p> <p>23 they were not re-hypothecating or lending those</p> <p>24 securities back out, that they basically would</p> <p>25 just hold on to them.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Does the treasury group or the</p> <p>3 treasury funding desk in general only hold cash</p> <p>4 or does it have an inventory of securities as</p> <p>5 well?</p> <p>6 MR. C. GREEN: Object to form.</p> <p>7 A. I don't know the composition of the</p> <p>8 holding company balance sheet. I can't say.</p> <p>9 Q. My question is really, I think, a</p> <p>10 little simpler than that. I am trying to</p> <p>11 understand the different sorts of information</p> <p>12 that are being supplied to the treasury funding</p> <p>13 desk versus what's being supplied to the repo</p> <p>14 desk. I believe you had suggested the repo</p> <p>15 desk information is different because your</p> <p>16 group is supplying information about the</p> <p>17 underlying assets of the group.</p> <p>18 MR. C. GREEN: Object to form.</p> <p>19 Q. Is that correct?</p> <p>20 A. The information provided to the</p> <p>21 treasury funding desk was information on cash,</p> <p>22 as previously stated. Cash balances, projected</p> <p>23 cash balances, settlement activity, things of</p> <p>24 that nature. The information provided to the</p> <p>25 repo desk, there was an element of cash,</p>

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<p>1 Fleming - Highly Confidential 2 information that was provided, but there was 3 also an emphasis on collateral, what type of 4 collateral, how much collateral and the value 5 of that collateral. The information provided 6 to the repo desk was specific to Lehman 7 Brothers, Inc., the broker/dealer, and the 8 information provided to the treasury funding 9 desk was largely associated with LBHI. I am 10 not saying in totality, but that was the core 11 focus. 12 Q. What system was used to generate the 13 reports or information provided to the treasury 14 funding and repo desks? 15 A. There were numerous systems in place 16 that provided different pieces of information. 17 I don't know exactly what, you know, all of 18 those systems are by name. 19 Q. For example, you mentioned reports 20 dealing with types of collateral and the value 21 of that collateral. What system would generate 22 such a report? 23 A. There was a -- I'm not sure -- I 24 don't want -- the definition of "system," I am 25 not a hundred percent sure what that is, but</p>	<p>1 Fleming - Highly Confidential 2 there was what we described as an application 3 called RTA, which stood for real-time 4 availability, which was the system that the 5 cash and collateral management team used to 6 derive projected cash and collateral positions 7 at the start of day. 8 Q. And how was the RTA application 9 populated with information? 10 A. That's a very technical question and 11 I can't answer that question. Now we are 12 talking code and logic, business logic, things 13 of that nature. 14 Q. More simply stated, how would the 15 values for any piece of collateral within that 16 system come to be? 17 MR. C. GREEN: Object to form. How 18 would the values come to be? 19 Q. Do you need me to clarify? 20 A. Yes, please. 21 Q. Was there someone who entered values 22 for each piece of collateral into the RTA 23 application? 24 A. It is my understanding that the 25 positions were marked, meaning there was a</p>
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<p>1 Fleming - Highly Confidential 2 market, a current market value applied. Where 3 that information was sourced from, I cannot 4 answer that question. 5 Q. Would it be sourced from different 6 people depending on the type of collateral? 7 MR. C. GREEN: Object to form. He 8 said he doesn't know the source. 9 A. I cannot tell you where that 10 information -- where the pricing information 11 was sourced from. What I can tell you is that 12 I am aware that the firm received pricing feeds 13 from vendors. I am also aware that in the 14 normal course traders mark their positions, but 15 I cannot tell you whether it was a vendor price 16 or a trader price that populated this 17 information. 18 Q. And how does the RTA application 19 differ from the GFS system? 20 MR. C. GREEN: Object to form. 21 A. The GFS application -- it's my 22 understanding that the GFS application had many 23 purposes, most of which I am not familiar with, 24 but have a general understanding where it would 25 provide post-settlement information such as</p>	<p>1 Fleming - Highly Confidential 2 residual collateral left in depos and I believe 3 there was cash capital information that was 4 provided by GFS. 5 Q. Did you use the GFS system in the 6 cash and collateral management group? 7 A. I believe that there was a small 8 piece of information that we extracted from 9 GFS, but it was -- in relation to all the data 10 that we had it was a very small piece. 11 Q. Could you tell me the names of the 12 individuals on the treasury funding desk? 13 MR. C. GREEN: In September 2008? 14 MS. CARRERO: In September 2008. 15 A. Steven Engel, David Forsyth, and I 16 believe Scott Alvey, although I can't say for 17 certain that he was part of that group at that 18 time. 19 Q. And could you list for me the names 20 of the individuals on the repo desk? 21 MR. C. GREEN: In September 2008? 22 MS. CARRERO: In September 2008. 23 A. The individual that we communicated 24 with most frequently was Larry Servidio and he 25 had someone who worked with him by the name of</p>

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2 Joseph Bellingeri. That does not constitute  
3 the whole repo desk. There were many other  
4 things that the repo desk was doing that we  
5 were not liaising with them on, so those two  
6 individuals were our primary contacts and those  
7 two individuals were the ones that were  
8 executing the bulk of Lehman Brothers, Inc.'s  
9 secured financing.

10 Q. And were Servidio and Bellingeri the  
11 individuals to whom your group would send  
12 reports?

13 MR. C. GREEN: Object to form.

14 A. The information that we provided, I  
15 believe, went to a broader distribution than  
16 just those two individuals.

17 Q. If you could take me through  
18 starting September 12th, 2008, the weekend  
19 before Lehman Brothers Holdings, Inc. filed for  
20 bankruptcy, what you were doing that weekend  
21 before the filing.

22 MR. C. GREEN: Object to form.

23 A. The weekend prior to bankruptcy, the  
24 holding company bankruptcy?

25 Q. Yes.

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2 MR. C. GREEN: This would be the  
3 weekend of the 13th and 14th?

4 MS. CARRERO: Yes, September 13th  
5 and 14th.

6 A. I don't recall. I don't remember if  
7 I was working or not working.

8 Q. Do you have any recollection of  
9 being involved in any sort of negotiations  
10 either directly or indirectly for the sale of  
11 any part of Lehman that weekend?

12 A. No.

13 Q. Were you ever involved in any  
14 negotiations for the sale of any part of Lehman  
15 or its assets?

16 A. No.

17 Q. Do you recall generally what you  
18 were doing on September 15th, the date that  
19 Lehman Brothers Holding had filed for  
20 bankruptcy?

21 A. That would be Monday?

22 Q. That would be Monday, September  
23 15th.

24 A. I mean, generally speaking, we were  
25 trying to figure out how we were going to

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2 continue to run LBI.

3 Q. And what decisions were made in  
4 terms of how to continue running LBI?

5 MR. C. GREEN: Object to form. What  
6 decisions were made by him?

7 Q. Do you have any recollection of what  
8 decisions were made in terms of running LBI?

9 MR. C. GREEN: By whom?

10 Q. On the 15th what's your  
11 recollection -- you had testified that on the  
12 15th what was going on was conversations in  
13 terms of how to run LBI. Could you expand upon  
14 that, please.

15 MR. C. GREEN: Object to form.

16 A. Okay. So the thought that -- Lehman  
17 Brothers was an integrated organization,  
18 meaning that legal entities were not simply  
19 stand-alone entities, that it was an integrated  
20 organization. Systems were integrated,  
21 processes were integrated. The notion that,  
22 you know, the 15th of September that we can say  
23 that, you know, the holding company is bankrupt  
24 and the broker/dealer is not and people just go  
25 about their day is just not a reality, so

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2 trying to shut down the holding company and its  
3 subsidiaries, which, quite frankly, at the time  
4 there was ambiguity around which legal entities  
5 were in bankruptcy and which ones were not, and  
6 trying to run LBI required a tremendous amount  
7 of coordination and effort between operations,  
8 technology, finance, treasury, right, to  
9 effectively shut down the pipes and plumbing as  
10 we could for that portion of the business that  
11 we believed was in bankruptcy while keeping  
12 within that same grid the portion that we  
13 thought was still a functioning entity open for  
14 business and being able to satisfy the  
15 obligations that came about on Monday morning.  
16 We had issued checks. We had -- there were  
17 debit cards clients were using. The banks are  
18 coming to us Monday morning saying, you know,  
19 how are you going to pay for this, how are you  
20 going to do this, how are you going to do that.  
21 So that was what I was spending the bulk of my  
22 time on, in addition to fielding questions from  
23 many, many different people internally and  
24 externally as it related to our ability to  
25 remit payment or fund for certain types of

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2 activities.

3 Q. At any point on September 15th did  
4 you become aware of negotiations for the sale  
5 of certain LBI assets?

6 A. I was not aware of any negotiations,  
7 so the answer to that question is no.

8 Q. Were you asked for any information  
9 either directly or indirectly that you believe  
10 was used in the negotiations for the sale?

11 MR. C. GREEN: Object to form.

12 A. Again, I don't know anything about  
13 the negotiations. I wasn't involved in  
14 negotiations. I wasn't asked to participate in  
15 negotiations. I wasn't asked to review any  
16 information related to the negotiations or the  
17 agreement, so I can't answer that question.

18 Q. When did you first become aware of  
19 either the negotiations or the sale, the actual  
20 deal?

21 MR. C. GREEN: Object to form. And  
22 which deal is it you are talking about?

23 MS. CARRERO: The deal between  
24 Lehman and Barclays for the sale of certain  
25 LBI assets.

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2 Do you understand the question?

3 A. I will just describe --

4 MR. C. GREEN: All right.

5 A. The team was responsible for  
6 tracking the funding position of the  
7 broker/dealer, which includes all of the  
8 activity, secured financing activity, and cash  
9 flow, so as a matter of course they would know  
10 all of the tri-party repo trades that were  
11 booked to settle, and it is my understanding  
12 that the Fed trades were facilitated through  
13 the tri-party repo system.

14 Q. And do you know if it would have  
15 been the treasury funding desk or the repo desk  
16 that would have entered into funding  
17 transactions with the Fed?

18 MR. C. GREEN: Object to form.

19 A. I would not know in that specific  
20 instance who executed those transactions.

21 (Exhibit 294B, e-mail dated  
22 September 15, 2008, Bates stamped 10302690,  
23 and Chase Tri-Party Haircut Summary, Bates  
24 stamped 10308382, marked for  
25 identification.)

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2 A. I don't recall exactly. I believe  
3 it was, you know -- I came to realize that when  
4 it was, you know, announced in the press.

5 Q. Do you recall on Monday, September  
6 15th, being involved with any financing being  
7 derived from the Fed?

8 MR. C. GREEN: Object to form.

9 A. I was located at 1301, I believe, on  
10 that Monday and the days leading up to  
11 bankruptcy. The rest of my team is located at  
12 70 Hudson, so the day-to-day activities, you  
13 know, the detailed activities in terms of what  
14 financing trades were doing and the like, I was  
15 not engaged in at that time, so I was not aware  
16 of the Fed trades that were being put on.

17 Q. Would your group generally be  
18 involved in any financing transactions with the  
19 Fed?

20 A. My team would have -- would  
21 understand, yes, what trades were being put on  
22 with the Fed.

23 Q. In what capacity would they know  
24 what trades were put on?

25 MR. C. GREEN: Object to form.

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2 Q. Mr. Fleming, you have before you  
3 what's been marked as Exhibit 294B, if you  
4 could take a moment and look it over.

5 MR. C. GREEN: Not to interrupt, but  
6 may I ask you, A, where these documents  
7 came from, and B, if you believe the  
8 attachment or the second page was actually  
9 the attachment to the first page when it  
10 was transmitted as an e-mail? Because the  
11 Bates numbers or identification numbers are  
12 unfamiliar to me and not sequential.

13 MS. CARRERO: The documents come  
14 from Lehman's system and the system -- the  
15 vendor system links the documents, so we do  
16 know them to be an e-mail and its  
17 attachment and different document numbers  
18 are assigned to each.

19 MR. C. GREEN: Okay. So you are  
20 representing that this second page was the  
21 attachment to the e-mail that is on the  
22 first page?

23 MS. CARRERO: Yes, I am.

24 Q. Mr. Fleming, have you had an  
25 opportunity to review the document?

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<p>1 Fleming - Highly Confidential</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall receiving this</p> <p>4 document?</p> <p>5 A. I don't specifically recall</p> <p>6 receiving this, no.</p> <p>7 Q. Does it surprise you that you would</p> <p>8 have received a document like this on the 15th?</p> <p>9 MR. C. GREEN: Object to form.</p> <p>10 A. When you say "surprise," what do you</p> <p>11 mean by that?</p> <p>12 Q. Do you generally receive documents</p> <p>13 with haircut amounts?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 A. This document doesn't look familiar</p> <p>16 to me, so this certainly would not be something</p> <p>17 that I had received on a frequent basis.</p> <p>18 Q. My question, more generally, is</p> <p>19 whether your group would receive the haircut</p> <p>20 amounts on any funding transactions.</p> <p>21 A. No, I would say generally not.</p> <p>22 Q. Is the haircut amount on a security</p> <p>23 collateralizing a repo generally within the</p> <p>24 system -- scratch that.</p> <p>25 Are haircut amounts listed on the</p>	<p>1 Fleming - Highly Confidential</p> <p>2 reports that you generate for the treasury</p> <p>3 funding desk or the repo desk?</p> <p>4 MR. C. GREEN: Object to form.</p> <p>5 Do you have the question in mind?</p> <p>6 THE WITNESS: I'm just thinking.</p> <p>7 A. I believe there was some form of</p> <p>8 haircut information that was produced within my</p> <p>9 team to help us understand why our cash</p> <p>10 position would change day over day.</p> <p>11 Q. And when you say your cash position</p> <p>12 would change day over day, is that because the</p> <p>13 higher the haircut, the more expensive any</p> <p>14 transaction becomes?</p> <p>15 MR. C. GREEN: Object to form.</p> <p>16 Assumes facts not in evidence.</p> <p>17 Q. Let me phrase it differently.</p> <p>18 Could you explain to me why you</p> <p>19 would care about the haircuts?</p> <p>20 A. The higher the haircut, the less</p> <p>21 cash that you will generate from that asset.</p> <p>22 Q. And your group would monitor the</p> <p>23 amount of cash that could be generated from any</p> <p>24 asset?</p> <p>25 MR. C. GREEN: Object to form.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 A. Our team was interested in</p> <p>3 understanding all of the dynamics that affected</p> <p>4 our cash positions, haircuts being one.</p> <p>5 Q. Could that be one reason why you</p> <p>6 received the PDCF haircuts on September 15th?</p> <p>7 MR. C. GREEN: Object to form.</p> <p>8 Calls for speculation.</p> <p>9 A. I don't recall receiving this e-mail</p> <p>10 and I don't know what the intent was.</p> <p>11 Q. If you could look at Sindy</p> <p>12 Aprigliano's e-mail where she writes the</p> <p>13 estimated impact is approximately 4 billion.</p> <p>14 Do you see that?</p> <p>15 A. Uh-huh, yes.</p> <p>16 Q. Is that consistent with your</p> <p>17 testimony about the cash and collateral group</p> <p>18 being interested in the effect of haircuts on</p> <p>19 cash position?</p> <p>20 MR. C. GREEN: Object to form. I</p> <p>21 think it mischaracterizes his testimony to</p> <p>22 the extent that he has said he doesn't</p> <p>23 remember seeing this e-mail, so I'm not</p> <p>24 certain he can testify whether her</p> <p>25 statement is consistent with his testimony</p>	<p>1 Fleming - Highly Confidential</p> <p>2 about his group's function. If he can</p> <p>3 answer the question, he should go ahead.</p> <p>4 A. Can you repeat it, the question.</p> <p>5 Q. I am simply asking if Sindy</p> <p>6 Aprigliano's statement that the estimated</p> <p>7 impact is approximately 4 billion is similar to</p> <p>8 your suggestion that your group was interested</p> <p>9 in the impact of haircuts on cash position?</p> <p>10 MR. C. GREEN: Object to form.</p> <p>11 A. Again, this was -- to my knowledge,</p> <p>12 this was not something that was, you know,</p> <p>13 normally distributed, this information. The</p> <p>14 information that we viewed around haircuts was</p> <p>15 away from this. So we had -- you know, in my</p> <p>16 team we had other information and other data</p> <p>17 that we used to look at changes in haircuts and</p> <p>18 assess, you know, the impact on cash positions.</p> <p>19 If someone was telling us that at some point in</p> <p>20 the future something was going to happen that</p> <p>21 was going to affect your cash position, then</p> <p>22 I'm sure it would have been of interest to us,</p> <p>23 but again, I don't recall this e-mail and I</p> <p>24 don't necessarily know what the intent of it</p> <p>25 was, whether it's accurate, whether it's not</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 accurate. I just don't know.</p> <p>3 Q. Do you have any recollection of the</p> <p>4 PDCF trade on the 15th?</p> <p>5 A. No.</p> <p>6 Q. Do you have any recollection of</p> <p>7 anything else you were doing that week of the</p> <p>8 15th?</p> <p>9 MR. C. GREEN: Object to form. Does</p> <p>10 he have any recollection of anything else</p> <p>11 he was doing during the week?</p> <p>12 Q. Day to day the week that LBHI filed</p> <p>13 for bankruptcy, do you recall coming in to the</p> <p>14 office every morning and what your functions</p> <p>15 were during that week?</p> <p>16 A. I remember chaos is what I remember.</p> <p>17 There was nothing normal about what was</p> <p>18 happening that week. There was nothing</p> <p>19 standard about what was happening that week. I</p> <p>20 recall fielding many, many questions and</p> <p>21 dealing with banks, dealing with issues of</p> <p>22 credit, dealing with issues of funding, dealing</p> <p>23 with people who I have never spoken with</p> <p>24 before, very senior people, either within the</p> <p>25 organization or outside the organization that</p>	<p>1 Fleming - Highly Confidential</p> <p>2 were concerned about the status of Lehman</p> <p>3 Brothers, Inc. and the ability to settle some</p> <p>4 of its obligations.</p> <p>5 Q. Do you recall the senior people</p> <p>6 within Lehman that you spoke to that week?</p> <p>7 MR. C. GREEN: Object to form.</p> <p>8 A. I don't remember all of them. I'm</p> <p>9 sure you have had a chance to take a look at my</p> <p>10 e-mails. Within those e-mails you could either</p> <p>11 see the e-mails that I received from people or</p> <p>12 my admin advising me that people were on the</p> <p>13 phone. She would shoot me e-mails. I think</p> <p>14 that's probably the best source of that</p> <p>15 information.</p> <p>16 Q. At some point in that week of</p> <p>17 September 15th, 2008 did you become aware of a</p> <p>18 repo transaction between Lehman and Barclays?</p> <p>19 A. I became aware of a transfer of</p> <p>20 assets. I do not know whether that was under a</p> <p>21 repo agreement or any other form of legal</p> <p>22 agreement between the two organizations, but I</p> <p>23 was aware that there was a transfer.</p> <p>24 Q. And when did you become aware of</p> <p>25 that transfer?</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 A. I don't recall the specific time.</p> <p>3 It was either, you know, Wednesday at some</p> <p>4 point during the day or early Thursday. It was</p> <p>5 more likely that it was Wednesday.</p> <p>6 Q. Did you learn about the transfer</p> <p>7 around the same time you learned about the</p> <p>8 Lehman/Barclays deal?</p> <p>9 MR. C. GREEN: Object to form.</p> <p>10 A. I don't recall the specifics on</p> <p>11 either one of them, you know, specifically the</p> <p>12 date or time of either. It probably was in and</p> <p>13 around the same time, give or take a few days.</p> <p>14 Q. And do you recall how you learned</p> <p>15 about the transfer of assets to take place?</p> <p>16 MR. C. GREEN: Object to form.</p> <p>17 A. I don't. That transfer was largely</p> <p>18 done away from myself and from my group.</p> <p>19 Q. What role, if any, did your group</p> <p>20 have in the transfer of assets?</p> <p>21 MR. C. GREEN: This is the transfer</p> <p>22 from Lehman to Barclays?</p> <p>23 MS. CARRERO: Yes. The transfer</p> <p>24 that Mr. Fleming learned about on Wednesday</p> <p>25 or Thursday of the week of the 15th.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. We had a very limited role. We</p> <p>3 basically were throughout the course of the day</p> <p>4 on Thursday trying to figure out what was going</p> <p>5 on.</p> <p>6 Q. When you say "trying to figure out</p> <p>7 what was going on," what do you mean?</p> <p>8 A. Generally in normal course when you</p> <p>9 are executing something of this size, you</p> <p>10 gather the appropriate people, you document</p> <p>11 what needs to happen. It's very clear the</p> <p>12 steps that need to be taken, what to expect,</p> <p>13 how to react to situations. None of that</p> <p>14 happened as it relates to this transfer. I was</p> <p>15 not engaged. I was not asked to engage. I do</p> <p>16 not believe that the people in my team were</p> <p>17 asked to engage. So we really didn't know what</p> <p>18 was going on. We were trying to figure out</p> <p>19 along the way on Thursday what was happening to</p> <p>20 our cash position, what was happening to our</p> <p>21 collateral position and what to expect at the</p> <p>22 end of the day.</p> <p>23 Q. Would you have expected your group</p> <p>24 to have been more involved in a transfer of the</p> <p>25 sort that was taking place on Thursday,</p>

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<p>1 Fleming - Highly Confidential 2 September 18th? 3 MR. C. GREEN: Object to form. 4 A. In normal course I would have been 5 actively engaged in a transfer of this size and 6 complexity. 7 Q. And do you have any understanding of 8 why you weren't engaged in a transfer of this 9 size and complexity? 10 MR. C. GREEN: Object to form. 11 A. I do not. 12 Q. Do you know who was involved in the 13 transfer transaction you have described? 14 A. I cannot say for certain who was 15 involved or what their involvement was. I had 16 a general understanding that there were some 17 folks in the operations clearance department, 18 the individuals, you know, responsible for 19 actually moving securities that were involved 20 to some degree, but again, because I didn't 21 have involvement, I can't really comment too 22 much on that. 23 Q. Mr. Fleming, you have before you 24 what has previously been marked as 25 Exhibit 142B.</p>	<p>1 Fleming - Highly Confidential 2 A. Yes. 3 Q. I will give you a minute to take a 4 look. 5 (Document review.) 6 MR. C. GREEN: I'm sorry, I was not 7 at the deposition where this exhibit was 8 previously marked. Was it the same case 9 with this exhibit that the second through 10 ending pages are attachments to the first 11 page when it was transmitted? 12 MS. CARRERO: Yes. 13 Q. Mr. Fleming, do you know what this 14 document is before you, Exhibit 142B? 15 A. I have never seen this before. I 16 don't recall. 17 Q. Have you seen in the past similar 18 types of documents as what is attached to the 19 e-mail of Exhibit 142B? 20 A. Are you referring to page numbered 21 466143? 22 Q. Yes. I am talking about the 23 attachments which are titled Schedule A 24 dated -- I'm not looking for -- scratch that. 25 Have you seen a similar type of</p>
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<p>1 Fleming - Highly Confidential 2 Schedule A before? 3 A. My team was not responsible for 4 documentation or in the setup of any of the 5 tri-party arrangements. However, I am familiar 6 with what a Schedule A is, what it represents, 7 and I have seen examples in the past. 8 Q. And do you have any understanding as 9 to why you would receive a copy of a Schedule A 10 to Master Purchase Agreement? 11 MR. C. GREEN: Object to form. 12 A. I don't know the relevance of this 13 being sent to me. 14 Q. For instance, would it, as you have 15 testified earlier today, be of interest to your 16 group, the haircut amounts on certain asset 17 classes for purposes of monitoring the cash 18 position? 19 MR. C. GREEN: Object to form. 20 A. I don't believe there is anything 21 that my group would have done with this 22 documentation to augment, you know, their 23 procedures or their projections or anything 24 like that. 25 Q. Prior to the transfer that we spoke</p>	<p>1 Fleming - Highly Confidential 2 of earlier between Lehman and Barclays, were 3 you aware of any other Lehman and Barclays 4 repos that were on the week of September 15th? 5 MR. C. GREEN: Object to form. Was 6 he aware prior to the transfer of any other 7 or was he aware of any others prior to the 8 transfer? 9 Q. Let me rephrase. 10 In addition to the transfer that we 11 discussed earlier that took place on September 12 18th, were you aware of any other transactions 13 between Lehman and Barclays, specifically repo 14 transactions? 15 MR. C. GREEN: Object to form. 16 A. At what point? 17 Q. The week of September 15th, are you 18 aware of there having been any repo between 19 Lehman and Barclays? 20 A. At any point during that week was I 21 made -- did I become aware of any other repo? 22 Is that the question? 23 Q. Yes. 24 A. Yes, I did. 25 Q. And how did you become aware of</p>

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2 another repo?

3 MR. C. GREEN: Object to form to the  
4 extent that the question implies that the  
5 prior transaction was, in Mr. Fleming's  
6 mind, a repo. He testified he didn't know  
7 whether it was a repo or not. So when you  
8 say "another repo," there is a repo that he  
9 said he is aware of.

10 MS. CARRERO: Let me rephrase.

11 Q. When did you become aware of a repo,  
12 other than the September 18 transfer we  
13 discussed earlier?

14 A. It was sometime either the evening  
15 of Thursday -- was Thursday the 18th?

16 MR. C. GREEN: Yes.

17 A. Or the early morning of Friday the  
18 19th when I was advised that we had a funding  
19 shortfall. That's when I was notified. That's  
20 when I became aware.

21 Q. And when you say that you were  
22 advised of a funding shortfall, can you  
23 explain?

24 MR. C. GREEN: Could he explain  
25 what?

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2 had a shortfall of cash and that we had a  
3 corresponding long collateral position. It was  
4 explained to me that there had been a tri-party  
5 repo on between LBI and I don't know which  
6 legal entity at Barclays, so I will just call  
7 it Barclays, for approximately \$15 billion and  
8 that at some point on Thursday, the 18th, that  
9 that trade had matured, termed, rolled off, I  
10 don't know the correct terminology to use other  
11 than to say that it was not there Thursday  
12 night. The individuals in my team did not know  
13 that that was happening, so that when we went  
14 to balance with the bank at the end of day, it  
15 came as a surprise to everyone that we didn't  
16 have that \$15 billion of tri-party cash. So  
17 that is how I became aware of the situation.

18 Q. And what happened as a consequence  
19 of the shortfall in cash?

20 A. The consequence of that is that we  
21 had to advise JPMorgan Chase as our clearing  
22 bank that we were short cash and required a  
23 secured box loan.

24 Q. And could you explain what a secured  
25 box loan is?

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2 Q. What you mean by a funding  
3 shortfall.

4 A. As of close of business on Thursday,  
5 the 18th, which actually wound up closing early  
6 Friday morning, but on that close of business  
7 that day Lehman Brothers, Inc. was short cash  
8 and that is what I mean by a funding shortfall.

9 Q. Why did you become short cash on  
10 Thursday, September 18th?

11 MR. C. GREEN: Object to form.

12 A. I can't answer the question why. I  
13 can describe to you the events as they were  
14 explained to me, which is that the asset  
15 transfer was executed in a non-traditional  
16 fashion which rendered our systems of  
17 monitoring cash and collateral positions, it  
18 rendered it basically useless. We did not have  
19 good visibility into what was happening on an  
20 intra-day basis because of the way that the  
21 asset transfer was affected. We were  
22 so-called, quote unquote, flying blind in terms  
23 of where our funding position was. As  
24 previously stated, I was advised either late  
25 Thursday night, early Friday morning that we

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2 A. A box loan is a term that's used to  
3 describe when a broker/dealer or client of a  
4 clearing bank borrows cash from that clearing  
5 bank versus collateral or assets that are  
6 sitting in that client's clearance account.

7 Q. You had described the asset transfer  
8 as being done in a non-traditional manner.

9 Could you explain what you meant by  
10 "non-traditional manner"?

11 A. Again, I was not at 70 Hudson with  
12 the people performing the day-to-day function,  
13 so I am providing you -- this is second-hand  
14 information that I am providing to you. I  
15 didn't have access to information. But the  
16 transfer that was done, I believe, was done  
17 between JPMorgan Chase and the Bank of New York  
18 as opposed to a transfer between Lehman  
19 Brothers and Barclays, and the mechanics of  
20 that settlement meant that the information that  
21 we normally derive from our clearing bank,  
22 JPMorgan, in terms of viewing information on  
23 screens and looking at our accounts at JPMorgan  
24 Chase which tell us what our cash and  
25 collateral position is, that those screens were



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<p>1 Fleming - Highly Confidential 2 not reflecting the activities of the transfer. 3 MR. C. GREEN: I don't mean to 4 interrupt, but we have been going about an 5 hour and a half and I wonder if we might be 6 able to take a break at a good opportunity. 7 MS. CARRERO: Sure. Let's just 8 finish this up and we can break in a couple 9 of minutes. 10 Q. I'm trying to understand your last 11 answer regarding the transaction or the 12 transfer being between JPMorgan and BONY as 13 opposed to a transfer between Lehman and 14 Barclays. Could you explain -- withdrawn. 15 In a normal or traditional transfer 16 as opposed to the non-traditional manner you 17 have described, what sort of feeds would 18 normally come through to your system? 19 MR. C. GREEN: Object to form. 20 A. In normal course if we delivered out 21 collateral, we would see our collateral 22 position decrease and we would see a cash 23 credit on the account. We did not -- we could 24 not see that or we did not see that, as 25 described to me from the people who were</p>	<p>1 Fleming - Highly Confidential 2 working at 70 Hudson, on the screens that we 3 use or used normally to view this activity. 4 MS. CARRERO: Why don't we take a 5 break now. 6 MR. C. GREEN: Okay. 7 (Recess was taken from 11:02 to 8 11:13.) 9 BY MS. CARRERO: 10 Q. Before the break we were talking 11 about the September 18th asset transfer and you 12 had described it as being done in a 13 non-traditional manner. Do you recall that? 14 A. Yes. 15 Q. Do you recall the terms of the 16 transfer? 17 MR. C. GREEN: Object to form. 18 A. No. 19 Q. Do you know if Lehman as a 20 consequence of the transfer received a certain 21 amount of cash? 22 A. I don't understand your question. 23 Can you rephrase it? 24 Q. Was a term of the transfer that 25 Lehman was to receive cash?</p>
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<p>1 Fleming - Highly Confidential 2 MR. C. GREEN: Object to form. I 3 think he has already testified he doesn't 4 know the terms of the transfer or doesn't 5 recall them. 6 Q. Mr. Fleming, I am putting before you 7 what's been marked previously as Exhibit 60B. 8 Do you see your name in the "to" line? 9 A. Yes. 10 Q. And you received this e-mail from 11 Ray Stancil at JPMorgan; is that correct? 12 A. That's what it appears. 13 Q. Do you know what this document is? 14 MR. C. GREEN: Are you referring to 15 the second page of this exhibit? 16 MS. CARRERO: I am referring to the 17 e-mail attaching an exhibit labeled 18 Lehman - Barcap - BONY Transition - 091808. 19 MR. C. GREEN: And this BONY 20 Transition Anticipated Prefunding document 21 is the attachment that was recovered with 22 the e-mail from your document system? 23 MS. CARRERO: Yes. 24 MR. C. GREEN: Do you have the 25 question in mind?</p>	<p>1 Fleming - Highly Confidential 2 Is there a question pending? 3 MS. CARRERO: Could you repeat it. 4 (Record read.) 5 A. I don't recall accessing this 6 document. 7 Q. Is this a document -- is this type 8 of document one that you would receive in the 9 normal course of business? 10 MR. C. GREEN: When you say 11 "document," you are referring to the 12 attachment; correct? 13 MS. CARRERO: Yes. 14 A. No, I would not normally receive a 15 document such as this in the normal course of 16 business. 17 Q. Do you think this document was 18 created specifically with respect to the 19 September 18th asset transfer? 20 MR. C. GREEN: Object to the form. 21 Calls for speculation. 22 MS. CARRERO: Go ahead and 23 speculate. 24 A. It would appear, as I look at it 25 today, that this document was in relation to</p>

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<p>1 Fleming - Highly Confidential 2 the transfer. 3 Q. Was it your understanding that 4 the -- scratch that. 5 Did you have any understanding with 6 respect to the collateral being transferred on 7 September 18th? 8 MR. C. GREEN: Object to form. 9 A. Can you repeat that. 10 Q. Do you have any understanding what 11 collateral was being transferred on September 12 18th? 13 A. No. 14 Q. Would your group have normally been 15 aware of the types of collateral being pledged 16 under a funding transaction? 17 MR. C. GREEN: Object to form. 18 A. Can you clarify what type of funding 19 transaction you are referring to? 20 Q. Let's just say a repo, for instance. 21 A. Can you describe what type of repo? 22 Q. A repo whereby Lehman would be 23 pledging assets in exchange for cash. 24 A. Not in all cases. 25 Q. In what cases would you not be aware</p>	<p>1 Fleming - Highly Confidential 2 of the types of collateral being pledged? 3 A. In a deliverable repo. 4 Q. Could you explain what you mean by 5 "deliverable repo"? 6 A. Deliverable repo is where the repo 7 is settled through the Federal Reserve's 8 Fed Wire system and that was something that we 9 would monitor the cash effect of those repos, 10 but we would not actively monitor the 11 underlying collateral associated with those 12 repos. 13 Q. Is that because of the -- withdrawn. 14 Is there some sort of automatic 15 allocation system for Fed wireable securities 16 that's the reason why you wouldn't know? 17 MR. C. GREEN: Object to the form. 18 A. What's the question? I'm not 19 sure -- it doesn't make sense. 20 Q. Let me rephrase. 21 Is there a reason why there is a 22 distinction between Fed Wire and other types of 23 securities with respect to being able to -- 24 withdrawn. 25 MS. CARRERO: Can we mark this as</p>
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<p>1 Fleming - Highly Confidential 2 295B. 3 (Exhibit 295B, e-mail dated 4 9-18-2008, marked for identification.) 5 Q. Mr. Fleming, you have before you 6 what's been marked as Exhibit 295B. Have you 7 had a chance to review it? 8 A. I was actually still reading through 9 it. 10 Q. I will give you a minute. 11 MR. C. GREEN: You should read 12 the -- unless there is a specific part of 13 the exhibit you want to focus his attention 14 on, I think he should read the entire 15 exhibit thoroughly. 16 MS. CARRERO: That's fine. 17 (Document review.) 18 A. Okay. 19 Q. Mr. Fleming, do you see yourself as 20 a recipient of both the bottom e-mail from 21 David Aranow on September 18th at 12:53 a.m. as 22 well as the top e-mail from Paolo Tonucci on 23 September 18th at 7:07 a.m.? 24 A. I see that I was -- it was 25 addressed -- the bottom was addressed to me,</p>	<p>1 Fleming - Highly Confidential 2 but I was CC'd on the top section, so it wasn't 3 the top. Paolo's e-mail was not addressed to 4 me. 5 Q. Were you a recipient of both? 6 A. Yes. 7 Q. Were you involved in any of the 8 logistics with respect to the Barclays 9 collateral move that is the subject of 10 Exhibit 295B? 11 MR. C. GREEN: Asked and answered. 12 Object to form. 13 A. No. 14 Q. Do you recall whether or not you had 15 any conversations with anyone at Barclays or 16 BONY or JP Chase the evening before the 17 transaction? 18 MR. C. GREEN: Object to form. 19 Which evening are you referring to 20 specifically? 21 MS. CARRERO: I am referring to in 22 the bottom e-mail that representatives from 23 Barclays, Lehman, BONY and JP Chase met to 24 discuss the Barclays collateral move. 25 MR. C. GREEN: And you want to know</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 if Mr. Fleming participated in those</p> <p>3 meetings?</p> <p>4 Q. If you participated in those</p> <p>5 meetings or if you had any conversations with</p> <p>6 anyone who participated in those meetings.</p> <p>7 A. Not that I recall.</p> <p>8 Q. Do you at all recall learning at the</p> <p>9 time or later how the collateral move was to</p> <p>10 take place?</p> <p>11 MR. C. GREEN: Object to form.</p> <p>12 A. Sorry. Say that again.</p> <p>13 MS. CARRERO: Could you.</p> <p>14 (Record read.)</p> <p>15 A. At what time?</p> <p>16 Q. Did you then or later learn the</p> <p>17 logistics of what is dubbed in this e-mail as</p> <p>18 the Barclays collateral move?</p> <p>19 MR. C. GREEN: Object to form.</p> <p>20 A. I don't recall receiving this.</p> <p>21 Q. Do you at all recall learning of any</p> <p>22 of the logistics that are set forth in this</p> <p>23 e-mail at any other point or in any other</p> <p>24 manner?</p> <p>25 A. No.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Turn your attention to the later</p> <p>3 e-mail from Paolo Tonucci where he writes: "I</p> <p>4 would like the RACERs to not be funded by</p> <p>5 Barclays. We need to work out if that is</p> <p>6 possible."</p> <p>7 Do you recall there being an issue</p> <p>8 with the RACERs in connection with the asset</p> <p>9 transfer?</p> <p>10 MR. C. GREEN: Object to form.</p> <p>11 A. You said there was an issue -- you</p> <p>12 said was there an issue? Was that the</p> <p>13 question?</p> <p>14 Q. Yes.</p> <p>15 MR. C. GREEN: Do you recall if</p> <p>16 there was an issue with the RACERs?</p> <p>17 A. I'm not sure how we would define</p> <p>18 "issue." I do recall that there was -- and I</p> <p>19 don't recall when this was, but I do recall</p> <p>20 learning that there was, as stated here, that</p> <p>21 the RACER was not to be part of the asset</p> <p>22 transfer.</p> <p>23 Q. Do you know why the RACER was not to</p> <p>24 be part of the transfer?</p> <p>25 A. I do not.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 Q. Do you know if it had previously</p> <p>3 been funded by either Barclays or the Fed prior</p> <p>4 to the asset transfer?</p> <p>5 MR. C. GREEN: Object to form. You</p> <p>6 are asking him if the RACER had previously</p> <p>7 been funded?</p> <p>8 MS. CARRERO: Yes.</p> <p>9 A. With either the Fed or Barclays, I</p> <p>10 cannot confirm whether it was or not.</p> <p>11 Q. Do you know why you would be CC'd on</p> <p>12 an e-mail saying that the RACER should not be</p> <p>13 funded by Barclays?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 Calls for speculation.</p> <p>16 MS. CARRERO: Go ahead.</p> <p>17 A. Paolo CC'd me on anything that -- he</p> <p>18 CC'd me on many things, so -- there is no</p> <p>19 action on my part based on this e-mail.</p> <p>20 Q. Do you recall receiving any other</p> <p>21 requests either verbally or in writing</p> <p>22 regarding assets that should or should not be</p> <p>23 pledged or transferred to Barclays on the 18th?</p> <p>24 MR. C. GREEN: Object to form.</p> <p>25 A. No.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Were you involved in the selection</p> <p>3 of assets to be transferred to Barclays?</p> <p>4 MR. C. GREEN: Asked and answered.</p> <p>5 Object to form.</p> <p>6 A. No.</p> <p>7 (Exhibit 296B, e-mail dated</p> <p>8 September 18, 2008, Bates stamped 10303223,</p> <p>9 marked for identification.)</p> <p>10 Q. Mr. Fleming, you have before you</p> <p>11 what's been marked as Exhibit 296B. Take a</p> <p>12 moment to review, particularly the second</p> <p>13 e-mail down.</p> <p>14 MR. C. GREEN: I would caution you</p> <p>15 to review the entire chain, Mr. Fleming.</p> <p>16 (Document review.)</p> <p>17 A. Okay.</p> <p>18 Q. Mr. Fleming, I direct your attention</p> <p>19 to the second e-mail down on Exhibit 296B.</p> <p>20 It's an e-mail message from James Hraska.</p> <p>21 Could you tell me who James Hraska</p> <p>22 is?</p> <p>23 A. James Hraska works in the -- what we</p> <p>24 describe as the middle office.</p> <p>25 Q. And how do the middle office and</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 your cash and collateral management group</p> <p>3 interact?</p> <p>4 MR. C. GREEN: Object to form.</p> <p>5 A. Predominantly for normal, you know,</p> <p>6 issue resolution.</p> <p>7 Q. Issue resolution with any particular</p> <p>8 types of transactions?</p> <p>9 A. Generally for, you know, trade</p> <p>10 entry, you know, issues.</p> <p>11 Q. And do you know why James Hraska is</p> <p>12 e-mailing you what I'll read into the record as</p> <p>13 "we are going to be cancelling 8.5 to 10 B of</p> <p>14 Fed deliverable collateral we lost due to GCF</p> <p>15 and other factors. We should be getting 10</p> <p>16 billion in collateral from GCF."</p> <p>17 MR. C. GREEN: Do you want to read</p> <p>18 the entire e-mail or is your question</p> <p>19 focused on the first sentence?</p> <p>20 MS. CARRERO: Yes, it's focused on</p> <p>21 the first sentence.</p> <p>22 MR. C. GREEN: Okay. Object to</p> <p>23 form. Calls for speculation.</p> <p>24 You may answer, if you have an</p> <p>25 answer.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. I'm not sure what James is</p> <p>3 communicating in this e-mail.</p> <p>4 Q. Does this e-mail chain in general</p> <p>5 refresh your recollection regarding what assets</p> <p>6 were being transferred on September 18th?</p> <p>7 A. No.</p> <p>8 Q. Do you have any recollection that</p> <p>9 the assets to be transferred were some of or</p> <p>10 all of the assets that had been pledged to the</p> <p>11 Fed on the evening of September 17th?</p> <p>12 MR. C. GREEN: Object to form.</p> <p>13 A. It would appear based on this memo</p> <p>14 that that is the case.</p> <p>15 Q. But that's not your personal</p> <p>16 recollection right now here today?</p> <p>17 MR. C. GREEN: Asked and answered.</p> <p>18 Object to form.</p> <p>19 A. I don't have a recollection of what</p> <p>20 was transpiring at that time. Based on this</p> <p>21 e-mail it would appear that that is the case.</p> <p>22 Q. And based on this e-mail does it</p> <p>23 appear as though 8.5 to 10 billion of the</p> <p>24 collateral was being cancelled due to GCF and</p> <p>25 other issues?</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Object to form.</p> <p>3 A. As I read this today, I don't</p> <p>4 understand it. This doesn't make sense to me.</p> <p>5 Q. Who would you expect to have</p> <p>6 knowledge of what was transferred under the</p> <p>7 repo?</p> <p>8 MR. C. GREEN: I'm sorry, when you</p> <p>9 say "repo," you mean this transaction</p> <p>10 between Lehman and Barclays?</p> <p>11 Q. I mean the transfer between -- on</p> <p>12 September 18th.</p> <p>13 A. It would be speculation.</p> <p>14 Q. Who would you expect, by speculation</p> <p>15 or otherwise, to have been involved with the</p> <p>16 selection of assets to be transferred?</p> <p>17 A. The CEO, CFO.</p> <p>18 (Exhibit 297B, e-mail dated</p> <p>19 9-18-2008, marked for identification.)</p> <p>20 Q. Mr. Fleming, you have before you</p> <p>21 what's been marked as Exhibit 297B. Do you see</p> <p>22 yourself as a recipient of this e-mail?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any recollection of the</p> <p>25 substance of this e-mail?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Object to form.</p> <p>3 A. I'm sorry, can you repeat the</p> <p>4 question.</p> <p>5 Q. Have you had an opportunity to read</p> <p>6 the e-mail?</p> <p>7 A. Yes.</p> <p>8 Q. After reading this e-mail, do you</p> <p>9 have any recollection of the substance of what</p> <p>10 you have read?</p> <p>11 A. I don't recall, you know -- I don't</p> <p>12 recall this particular instance.</p> <p>13 Q. So you don't recall that on the</p> <p>14 evening of September 18th there was collateral</p> <p>15 left to be funded and a question of whether it</p> <p>16 was to be moved to Barclays?</p> <p>17 MR. C. GREEN: Object to form. Is</p> <p>18 that your characterization of this e-mail?</p> <p>19 Q. With or without this e-mail, do you</p> <p>20 have any recollection on September 18th of</p> <p>21 there being collateral available to be</p> <p>22 transferred to Barclays that Barclays did not</p> <p>23 want?</p> <p>24 A. That Barclays did not want? I am</p> <p>25 aware that some amount of assets did not</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 transfer over to Barclays.</p> <p>3 Q. Do you know why those specific</p> <p>4 assets were not transferred over to Barclays?</p> <p>5 A. I do not.</p> <p>6 (Exhibit 298B, e-mail dated</p> <p>7 9-21-2008, marked for identification.)</p> <p>8 Q. Mr. Fleming, you have before you</p> <p>9 what's been marked as Exhibit 298B.</p> <p>10 (Document review.)</p> <p>11 Q. Have you had an opportunity to</p> <p>12 review the e-mail?</p> <p>13 A. I need another minute.</p> <p>14 (Document review.)</p> <p>15 A. Okay.</p> <p>16 Q. Do you recall this e-mail exchange</p> <p>17 with David Aranow?</p> <p>18 A. Not specifically.</p> <p>19 Q. Do you recall the substance of the</p> <p>20 questions and answers being had in the e-mail?</p> <p>21 MR. C. GREEN: Object to form.</p> <p>22 A. I recall the substance.</p> <p>23 Q. What do you recall?</p> <p>24 A. Trying to understand what happened.</p> <p>25 Q. Can you explain that a little bit</p>	<p>1 Fleming - Highly Confidential</p> <p>2 more?</p> <p>3 A. As previously described, the nature</p> <p>4 of the transfer rendered our systems of</p> <p>5 monitoring activity obsolete. It is -- we were</p> <p>6 attempting to recreate what had happened, what</p> <p>7 had transpired.</p> <p>8 Q. And how were you attempting to do</p> <p>9 that?</p> <p>10 A. Trying to understand how much money</p> <p>11 was paid.</p> <p>12 Q. And why was there a question as to</p> <p>13 how much money was paid?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 A. Why was there a question? Because</p> <p>16 we didn't have visibility into the transaction.</p> <p>17 Q. In terms of not having visibility,</p> <p>18 was that only on the cash side or the</p> <p>19 collateral side as well?</p> <p>20 MR. C. GREEN: Object to form.</p> <p>21 A. I believe it was both.</p> <p>22 Q. And was the lack of visibility a</p> <p>23 consequence of the transaction not being booked</p> <p>24 into a certain system?</p> <p>25 MR. C. GREEN: Object to form.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 Asked and answered.</p> <p>3 A. I don't know the answer to that.</p> <p>4 Again, I was located at 1301. The team</p> <p>5 managing the details behind this are located at</p> <p>6 70 Hudson. So I don't know why -- I don't know</p> <p>7 how the transaction was facilitated and I don't</p> <p>8 have an answer as to why we couldn't view it.</p> <p>9 Q. In the ordinary course for you to</p> <p>10 view or to have visibility of a transaction,</p> <p>11 would it have to be booked into a specific</p> <p>12 system?</p> <p>13 MR. C. GREEN: Object to form.</p> <p>14 A. Yes.</p> <p>15 Q. What system would it need to be</p> <p>16 booked into?</p> <p>17 A. I don't know the answer to that. It</p> <p>18 depends on how they affected or facilitated the</p> <p>19 transfer, but if the transaction settled, then</p> <p>20 it would have had to have been booked</p> <p>21 somewhere. Whether that's by Chase, whether</p> <p>22 it's by the Fed, I can't -- I don't know the</p> <p>23 answer to that.</p> <p>24 Q. I'm sorry. Maybe you misunderstood</p> <p>25 my question. My question was for your team to</p>	<p>1 Fleming - Highly Confidential</p> <p>2 have visibility of the amount of cash</p> <p>3 transferred and the collateral being</p> <p>4 transferred, is there a Lehman internal system</p> <p>5 in which it would need to be booked?</p> <p>6 A. No.</p> <p>7 Q. So the visibility your group would</p> <p>8 get would be through third parties; is that</p> <p>9 correct?</p> <p>10 MR. C. GREEN: Object to the form.</p> <p>11 A. Through access to our account</p> <p>12 activity at our clearing bank.</p> <p>13 Q. So it would be Chase as Lehman's</p> <p>14 clearing bank that would provide the feed</p> <p>15 enabling your group to have visibility; is that</p> <p>16 correct?</p> <p>17 MR. C. GREEN: Object to the form.</p> <p>18 A. Normally that's what would occur.</p> <p>19 Q. And normally the visibility you</p> <p>20 would have, would that -- withdrawn.</p> <p>21 Did Lehman ever come to have</p> <p>22 visibility any time after September 18th with</p> <p>23 respect to the transaction and -- I'm sorry,</p> <p>24 withdrawn.</p> <p>25 Did Chase ever provide the feed</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 necessary to have visibility of the September</p> <p>3 18th transfer?</p> <p>4 MR. C. GREEN: Object to form.</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. And do you know why not?</p> <p>7 A. I do not.</p> <p>8 MR. C. GREEN: Object to the form.</p> <p>9 Calls for speculation.</p> <p>10 Q. In the ordinary course when Chase</p> <p>11 did provide a feed enabling visibility, would</p> <p>12 it include market values for the collateral</p> <p>13 being pledged?</p> <p>14 A. I can't answer that question. I</p> <p>15 didn't manage the day-to-day. I didn't view</p> <p>16 these screens each day. I wasn't that close to</p> <p>17 it, so those type of detailed questions I am</p> <p>18 not going to be able to answer.</p> <p>19 Q. Is there any link between the Chase</p> <p>20 feeds and the application you have described</p> <p>21 earlier today called the RTA, real-time</p> <p>22 availability application?</p> <p>23 A. Can you repeat the question again.</p> <p>24 (Record read.)</p> <p>25 A. No.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Could you explain the difference</p> <p>3 between the two?</p> <p>4 A. One is an internal Lehman</p> <p>5 application and the other is an access into a</p> <p>6 clearing system.</p> <p>7 Q. Are the numbers in the internal</p> <p>8 application system not dependent on the figures</p> <p>9 being ascertained from the -- from accessing</p> <p>10 the clearing system?</p> <p>11 MR. C. GREEN: Object to form.</p> <p>12 A. I'm not sure I understand what that</p> <p>13 question means.</p> <p>14 Q. I am trying to understand how the</p> <p>15 two are related, if at all. If the RTA system</p> <p>16 or application generates reports with cash and</p> <p>17 collateral positions, I am trying to understand</p> <p>18 where that information comes from and if it</p> <p>19 comes from the feeds being obtained from</p> <p>20 Lehman's clearing bank.</p> <p>21 MR. C. GREEN: Object to the form.</p> <p>22 A. One is a start-of-day projection.</p> <p>23 One of them is a real-time view into positions.</p> <p>24 Q. The start-of-day projection being</p> <p>25 generated by the RTA application; is that</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. The end-of-day view from Lehman's</p> <p>5 custodian, Chase, would not affect the start of</p> <p>6 day projection in the RTA system?</p> <p>7 MR. C. GREEN: Object to form.</p> <p>8 Q. Is that correct?</p> <p>9 A. There was no direct link between the</p> <p>10 two.</p> <p>11 Q. Do you have any recollection of what</p> <p>12 collateral remained with Lehman and was not</p> <p>13 transferred to Barclays?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 Asked and answered.</p> <p>16 A. I don't know.</p> <p>17 Q. Neither the quantity or the types of</p> <p>18 classes that might not have transferred?</p> <p>19 MR. C. GREEN: Same objection.</p> <p>20 A. That's correct, I don't know.</p> <p>21 Q. Back to Exhibit 298B, is it your</p> <p>22 recollection that Barclays transferred 45</p> <p>23 billion to Lehman on September 18th?</p> <p>24 A. That is what this e-mail indicates.</p> <p>25 Q. But as you sit here today, you have</p>	<p>1 Fleming - Highly Confidential</p> <p>2 no recollection as to the amount of cash</p> <p>3 transferred to Lehman on September 18th in</p> <p>4 connection with the asset transfer we</p> <p>5 discussed?</p> <p>6 MR. C. GREEN: Object to form.</p> <p>7 A. I don't know what that amount was.</p> <p>8 I think it's clear by this e-mail that we</p> <p>9 didn't know what that amount was even</p> <p>10 subsequent to the transfer.</p> <p>11 Q. Do you have reason to believe that</p> <p>12 the number was not 45 billion -- withdrawn.</p> <p>13 Could you tell me who David Aranow</p> <p>14 is?</p> <p>15 A. David Aranow is an employee of</p> <p>16 Lehman Brothers.</p> <p>17 Q. And do you know his function or</p> <p>18 title at Lehman Brothers?</p> <p>19 A. At what point?</p> <p>20 Q. In September of 2008.</p> <p>21 A. You would need to confirm this with</p> <p>22 David, but I believe that he was working in the</p> <p>23 prime services business as a senior vice</p> <p>24 president.</p> <p>25 Q. The prime services division is the</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 division in which the repo desk is situated;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And do you know who Dave Petrie is?</p> <p>6 A. Other than him being a Barclays</p> <p>7 employee, I do not know what his role is or</p> <p>8 was.</p> <p>9 Q. In Exhibit 298 B you write to Monty</p> <p>10 Forrest and David Aranow asking for Dave</p> <p>11 Petrie's contact info. Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if you ever contacted</p> <p>14 him subsequent to this e-mail?</p> <p>15 A. I do not believe so.</p> <p>16 Q. And do you recall why you were</p> <p>17 looking for his contact information?</p> <p>18 A. I don't recall why I requested his</p> <p>19 contact info on the 21st.</p> <p>20 Q. Do you recall if you ever had any</p> <p>21 conversations with Dave Petrie?</p> <p>22 MR. C. GREEN: Object to the form.</p> <p>23 Asked and answered, I believe.</p> <p>24 MS. CARRERO: Go ahead and answer.</p> <p>25 A. I do not believe so.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Mr. Fleming, you have before you</p> <p>3 what's been previously marked as Exhibit 139A.</p> <p>4 Please take a moment and look it over. I would</p> <p>5 like to specifically turn your attention to the</p> <p>6 e-mail at the top of the e-mail chain.</p> <p>7 (Document review.)</p> <p>8 A. Okay.</p> <p>9 Q. Did you receive this message?</p> <p>10 A. I don't recall if I read it. I see</p> <p>11 that I was CC'd on it.</p> <p>12 Q. Do you recall the substance of this</p> <p>13 message which is a message from James Hraska</p> <p>14 where he writes: "Agreed. In addition, I just</p> <p>15 want to make sure that everyone is clear that</p> <p>16 \$7 billion that was locked up for Barcap in tri</p> <p>17 was returned to JP Chase. If anyone has any</p> <p>18 questions, please call me."</p> <p>19 A. I do recall the issue of the 7</p> <p>20 billion. Not specifically as it relates to</p> <p>21 this e-mail.</p> <p>22 Q. What do you recall about the issue</p> <p>23 of 7 billion?</p> <p>24 A. It's my understanding that there was</p> <p>25 a shortfall in the amount of assets pledged as</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 part of the asset transfer to the tune of 7</p> <p>3 billion and that the cash that had been</p> <p>4 transferred for that 7 billion and residing at</p> <p>5 Chase was -- it was agreed that that cash would</p> <p>6 be put in a Barclays account at JPMorgan Chase.</p> <p>7 Q. And was that cash, in fact, put into</p> <p>8 an account, a Barclays account, at JPMorgan</p> <p>9 Chase?</p> <p>10 MR. C. GREEN: Object to form.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you have any recollection of any</p> <p>13 events that transpired after -- withdrawn.</p> <p>14 So as you sit here today, you have</p> <p>15 no knowledge or recollection of whether the 7</p> <p>16 billion cash was, in fact, transferred to</p> <p>17 Barclays; is that correct?</p> <p>18 MR. C. GREEN: Object to form. You</p> <p>19 mean placed in an account on Barclays'</p> <p>20 behalf? I think that's what he testified</p> <p>21 about, it was agreed that the cash would be</p> <p>22 put in a Barclays account at JPMorgan</p> <p>23 Chase.</p> <p>24 Q. Let me rephrase.</p> <p>25 As you sit here today, do you have</p>	<p>1 Fleming - Highly Confidential</p> <p>2 any knowledge or recollection as to whether 7</p> <p>3 billion in cash was transferred to Barclays?</p> <p>4 MR. C. GREEN: Object to form.</p> <p>5 A. On this day? Is that the question?</p> <p>6 Q. On this day or after.</p> <p>7 A. I do not know whether there was a</p> <p>8 transfer of cash into a Barclays account on</p> <p>9 this day, this day being close of business</p> <p>10 Thursday the 18th.</p> <p>11 Q. Do you know if there were any</p> <p>12 attempted or actual transfers of 7 billion in</p> <p>13 cash after Thursday, September 18th?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 A. I'm not aware of any transfer of</p> <p>16 \$7 billion of cash from JPMorgan to Barclays.</p> <p>17 Q. Is it your group that would be</p> <p>18 responsible for liaising with both Barclays</p> <p>19 and JPMorgan Chase with respect to a cash</p> <p>20 transfer like the 7 billion contemplated?</p> <p>21 MR. C. GREEN: Object to form.</p> <p>22 A. I don't believe so. I believe that</p> <p>23 was a transaction between JPMorgan Chase and</p> <p>24 Barclays.</p> <p>25 Q. Could you explain why you describe</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 it as a transaction between JPMorgan Chase and</p> <p>3 Barclays?</p> <p>4 A. It is my understanding that Barclays</p> <p>5 had sent some money to the tune of \$7 billion</p> <p>6 to JPMorgan and did not get assets in return.</p> <p>7 Q. Is it your understanding that the 7</p> <p>8 billion Barclays sent to JPMorgan remained with</p> <p>9 JPMorgan then?</p> <p>10 A. It was my understanding at the time</p> <p>11 that JPMorgan put that cash into a Barclays</p> <p>12 account held at JPMorgan.</p> <p>13 Q. So when you say there was no</p> <p>14 transfer of 7 billion on September 18th from</p> <p>15 JPMorgan into Barclays' account, I am trying to</p> <p>16 understand how to reconcile that with your</p> <p>17 later answer that the 7 billion delivered from</p> <p>18 Barclays to JPMorgan Chase went into a Barclays</p> <p>19 account at JPMorgan Chase.</p> <p>20 MR. C. GREEN: Object to form. I</p> <p>21 think you may want to try that question</p> <p>22 again.</p> <p>23 Q. Just to simplify it, I am not quite</p> <p>24 sure I understand your last answer about 7</p> <p>25 billion being delivered by Barclays to JPMorgan</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Chase which subsequently went into a Barclays</p> <p>3 account at JPMorgan Chase. Could you explain?</p> <p>4 A. It's my understanding that Barclays</p> <p>5 had paid for something that they didn't</p> <p>6 receive, so, in effect, JPMorgan had received</p> <p>7 funds that they weren't entitled to, that they</p> <p>8 were Barclays' funds, until such time that</p> <p>9 assets were transferred over to the Barclays</p> <p>10 account. Given the timing of the transfer and</p> <p>11 the fact that this was, you know, probably</p> <p>12 around midnight and that no more transfers were</p> <p>13 due to transpire for that Thursday, Barclays --</p> <p>14 I'm probably not the right person to describe</p> <p>15 this, because at the time I was not a Barclays</p> <p>16 employee, but, you know, Barclays, you know,</p> <p>17 viewed that they were out of pocket \$7 billion</p> <p>18 and requested that JPMorgan take that 7 billion</p> <p>19 that they had and to put it into an account,</p> <p>20 into a Barclays account. So it is almost as</p> <p>21 though it was, you know, Barclays transferred 7</p> <p>22 to JPMorgan and then JPMorgan put it into a</p> <p>23 Barclays account. So Barclays should have --</p> <p>24 you know, based on the description should have</p> <p>25 been, you know, protected, so to speak. I'm</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 not sure that's the proper word, but...</p> <p>3 Q. I am confused about where Lehman</p> <p>4 fits into the equation with respect to the 7</p> <p>5 billion. Could you clarify for me why you</p> <p>6 describe the \$7 billion dispute between</p> <p>7 JPMorgan Chase and Barclays when it's the</p> <p>8 Lehman securities that were failed to be</p> <p>9 delivered?</p> <p>10 MR. C. GREEN: Object to the form of</p> <p>11 the question.</p> <p>12 A. I can't, because I wasn't party to</p> <p>13 the whole asset transfer structuring of how it</p> <p>14 was mechanically going to work. From my</p> <p>15 perspective I viewed this as a transfer of</p> <p>16 assets between Bank of New York and JPMorgan</p> <p>17 Chase.</p> <p>18 Q. As custodian banks for Lehman and</p> <p>19 Barclays?</p> <p>20 MR. C. GREEN: Object to the form.</p> <p>21 A. I don't think that they were</p> <p>22 stepping in as principal at any point during</p> <p>23 this transaction, but it was -- if Lehman still</p> <p>24 had their assets, 7 billion of assets, and</p> <p>25 Barclays paid money to JPMorgan Chase, then</p>	<p>1 Fleming - Highly Confidential</p> <p>2 JPMorgan Chase owes that money to Barclays, not</p> <p>3 Lehman. It was almost as though you could</p> <p>4 consider that as funds paid in error that were</p> <p>5 due to be returned.</p> <p>6 Q. And does that mean that 7 billion</p> <p>7 should be subtracted from the amount of cash</p> <p>8 Lehman received under the transfer?</p> <p>9 MR. C. GREEN: Object to the form of</p> <p>10 the question. Calls for speculation.</p> <p>11 You can answer, if you have an</p> <p>12 answer.</p> <p>13 A. I don't know what should have</p> <p>14 happened.</p> <p>15 Q. But you viewed it as 7 billion</p> <p>16 transferred in error; is that correct?</p> <p>17 A. Lehman did not get credited for that</p> <p>18 7 billion.</p> <p>19 (Exhibit 299B, e-mail dated</p> <p>20 9-19-2008, marked for identification.)</p> <p>21 Q. Mr. Fleming, you have before you</p> <p>22 what's been marked as Exhibit 299B. It's an</p> <p>23 e-mail from you to Paolo Tonucci on September</p> <p>24 19 at 4:42 p.m.</p> <p>25 You write: "Bob Diamond is speaking</p>



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<p>1 Fleming - Highly Confidential</p> <p>2 to JPM about the 7 billion of cash allocated to</p> <p>3 Barclays in tri-party last night." Do you</p> <p>4 recall sending this message?</p> <p>5 A. I do recall sending this message.</p> <p>6 Q. Do you recall the circumstances</p> <p>7 around which you sent it?</p> <p>8 MR. C. GREEN: Object to form.</p> <p>9 A. I do not know or do not recall how I</p> <p>10 learned of this. I certainly did not speak to</p> <p>11 Bob Diamond. It was secondhand at best. It</p> <p>12 was, you know, an attempt to communicate</p> <p>13 whatever information was available. I do not</p> <p>14 know whether this actually happened.</p> <p>15 Q. Meaning you do not know if Bob</p> <p>16 Diamond actually spoke with JPM about the 7</p> <p>17 billion of cash?</p> <p>18 A. I cannot definitively say that that</p> <p>19 occurred.</p> <p>20 Q. Was it your understanding that the 7</p> <p>21 billion of cash was a reference to the 7</p> <p>22 billion of cash that had been transferred in</p> <p>23 error and resulted in a shortfall to Barclays?</p> <p>24 MR. C. GREEN: Object to form. To</p> <p>25 Barclays?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MS. CARRERO: Let me rephrase that.</p> <p>3 Q. Is it your recollection that the 7</p> <p>4 billion of cash is in reference to the 7</p> <p>5 billion transferred by Barclays under the</p> <p>6 September 18 asset transfer in which there was</p> <p>7 a \$7 billion collateral shortfall?</p> <p>8 A. Yes, it's my understanding that this</p> <p>9 is in reference to the same 7 billion, the 7</p> <p>10 billion that we previously discussed.</p> <p>11 Q. And do you recall how you heard that</p> <p>12 Bob Diamond was speaking to JPM?</p> <p>13 MR. C. GREEN: Object to form.</p> <p>14 Asked and answered.</p> <p>15 A. I do not recall.</p> <p>16 Q. Do you know why there was a</p> <p>17 collateral shortfall on September 18th in</p> <p>18 connection with the asset transfer?</p> <p>19 MR. C. GREEN: Object to form.</p> <p>20 Asked and answered.</p> <p>21 A. I do not know why the assets did not</p> <p>22 transfer over.</p> <p>23 Q. Did you come to learn that the</p> <p>24 assets that had been transferred on September</p> <p>25 18th from Lehman to Barclays were part of the</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 larger asset sale that had been agreed to</p> <p>3 earlier that week?</p> <p>4 MR. C. GREEN: Object to form.</p> <p>5 Calls for a legal conclusion.</p> <p>6 You may answer, if you have an</p> <p>7 answer.</p> <p>8 A. I was not, again, subject to the</p> <p>9 terms of those agreements, so I would not be</p> <p>10 able to draw any conclusions on the transfer of</p> <p>11 assets as it relates to whether they were</p> <p>12 related to any legal agreement that I was not a</p> <p>13 party to.</p> <p>14 Q. I am not asking you for any legal</p> <p>15 opinion. I am just asking did you -- was it</p> <p>16 your understanding at some point that week that</p> <p>17 Barclays was purchasing the assets being</p> <p>18 transferred on September 18?</p> <p>19 A. At some point that became apparent,</p> <p>20 but I don't recall when that was.</p> <p>21 Q. Do you recall how it became apparent</p> <p>22 to you?</p> <p>23 A. I don't.</p> <p>24 Q. Do you recall if it became apparent</p> <p>25 before September 22nd?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Object to form. I'm</p> <p>3 sorry. When you say "it became apparent,"</p> <p>4 you are referring to what?</p> <p>5 Q. The purchase. Do you recall roughly</p> <p>6 when the purchase became apparent? Was it in</p> <p>7 sometime the week of September 15th, was it the</p> <p>8 next week, sometime the week of September 22nd,</p> <p>9 was it months later?</p> <p>10 MR. C. GREEN: And just to make sure</p> <p>11 the record is clear, when you say</p> <p>12 "purchase," you are referring to the</p> <p>13 purchase of the assets that were</p> <p>14 transferred on the 18th --</p> <p>15 MS. CARRERO: Yes.</p> <p>16 MR. C. GREEN: -- from JPMorgan to</p> <p>17 Bank of New York?</p> <p>18 MS. CARRERO: Or, more specifically,</p> <p>19 assets that were owned by Lehman and</p> <p>20 purchased by Barclays.</p> <p>21 MR. C. GREEN: Do you have the</p> <p>22 question in mind, Mr. Fleming?</p> <p>23 A. I don't recall. I don't recall when</p> <p>24 that realization occurred.</p> <p>25 Q. Were you at any time involved in</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 putting together a list of the collateral that</p> <p>3 had been transferred from Lehman to Barclays on</p> <p>4 September 18th?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Do you recall ever receiving such</p> <p>7 lists?</p> <p>8 A. I don't have specific recollection</p> <p>9 of receiving a list.</p> <p>10 Q. Do you recall any issues with</p> <p>11 reconciling the positions that had been</p> <p>12 transferred on September 18th between Lehman</p> <p>13 and Barclays and its custodians?</p> <p>14 MR. C. GREEN: Object to form.</p> <p>15 A. Can you repeat that question.</p> <p>16 Q. Do you recall there being a process</p> <p>17 of reconciliation between the collateral list</p> <p>18 setting forth the positions that had been</p> <p>19 transferred on September 18th between Lehman,</p> <p>20 Barclays and their respective custodians,</p> <p>21 JPMorgan Chase and BONY?</p> <p>22 MR. C. GREEN: Object to form.</p> <p>23 A. I recall there being a significant</p> <p>24 effort post the 18th to reconcile the books and</p> <p>25 records.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. And do you recall what that process</p> <p>3 of reconciliation entailed?</p> <p>4 A. I didn't -- I wasn't responsible for</p> <p>5 reconciliations at Lehman Brothers, so what it</p> <p>6 entailed, I couldn't answer that question.</p> <p>7 Q. I am putting in front of you what</p> <p>8 has been previously marked as Exhibit 47.</p> <p>9 Mr. Fleming, do you recall receiving</p> <p>10 a collateral schedule similar to the one</p> <p>11 attached to Exhibit 47 or Exhibit 47 itself?</p> <p>12 MR. C. GREEN: Mr. Fleming, take a</p> <p>13 moment to review the e-mail at the front of</p> <p>14 Exhibit 47. Make sure you have read the</p> <p>15 entire thing before we proceed, please.</p> <p>16 (Document review.)</p> <p>17 MR. C. GREEN: I don't mean the</p> <p>18 entire exhibit, I mean the entire e-mail,</p> <p>19 just for the record.</p> <p>20 MS. CARRERO: I understand. Yes,</p> <p>21 you may read the four-page e-mail.</p> <p>22 A. Okay.</p> <p>23 Q. Do you recall receiving this</p> <p>24 collateral schedule or a collateral schedule</p> <p>25 similar to this at any point the week of</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 September 15th or afterwards?</p> <p>3 A. I don't recall receiving anything</p> <p>4 like this.</p> <p>5 Q. Turn your attention to the e-mail</p> <p>6 dated September 20th at 11:38 a.m. asking if</p> <p>7 50 percent of residential mortgages were transferred</p> <p>8 through the repo or if they had to be</p> <p>9 transferred at closing.</p> <p>10 Does that accurately summarize</p> <p>11 Mr. Miller's September 20th e-mail?</p> <p>12 MR. C. GREEN: Are you asking</p> <p>13 Mr. Fleming if your characterization</p> <p>14 accurately summarizes Mr. Miller's e-mail?</p> <p>15 MS. CARRERO: Withdrawn.</p> <p>16 Q. Do you recall whether 50 percent of</p> <p>17 residential mortgages were transferred on</p> <p>18 September 18th to Barclays or if they were to</p> <p>19 be transferred at the closing?</p> <p>20 MR. C. GREEN: Object to form.</p> <p>21 Asked and answered, but you may answer it</p> <p>22 again.</p> <p>23 A. No, I don't.</p> <p>24 Q. Again, you have no recollection of</p> <p>25 what collateral was transferred on September</p>	<p>1 Fleming - Highly Confidential</p> <p>2 18th; is that correct?</p> <p>3 A. No. There is many e-mails out</p> <p>4 there, some of which I didn't even read. I</p> <p>5 certainly didn't --</p> <p>6 Q. Do you know why you are being copied</p> <p>7 on this e-mail and others asking about what</p> <p>8 collateral is transferred on September 18th?</p> <p>9 MR. C. GREEN: Object to form.</p> <p>10 Calls for speculation and assumes facts not</p> <p>11 in the record.</p> <p>12 You may answer, if you have an</p> <p>13 answer.</p> <p>14 A. I don't know the answer. Clearly --</p> <p>15 what would I possibly do with this document?</p> <p>16 Q. If you could turn to page Bates</p> <p>17 numbered BCICG 00035138. This document appears</p> <p>18 to be a summary of the market value of the</p> <p>19 positions transferred on September 18th</p> <p>20 totaling, according to this sheet,</p> <p>21 49,902,924,897.20.</p> <p>22 Did you ever have any sort of</p> <p>23 understanding as to the market value of the</p> <p>24 positions being transferred on September 18th,</p> <p>25 if not the specific CUSIPs that were being</p>

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<p>1 Fleming - Highly Confidential 2 transferred on the 18th? 3 MR. C. GREEN: I would suggest, 4 Mr. Fleming, that you answer the question, 5 not the characterization of this document. 6 MS. CARRERO: That's fine. 7 MR. C. GREEN: If you have an answer 8 to the question. 9 A. I believe that at the time I was 10 given a general indication of the proceeds to 11 be received as a result of the asset transfer. 12 I don't recall at this point what that number 13 was. And I do vaguely recall that there was 14 some reference to market value. That was an 15 irrelevant number to me, so I wouldn't have 16 paid attention. 17 Q. So when you say "proceeds," you mean 18 the cash to be received or the value of the 19 collateral to be pledged? 20 MR. C. GREEN: Object to form. 21 A. The cash to be received. 22 Q. And in learning about the cash to be 23 received, it would have been conveyed to you 24 the market value of the assets to be pledged? 25 MR. C. GREEN: Is that a question?</p>	<p>1 Fleming - Highly Confidential 2 Q. To clarify, I am asking if in 3 learning the amount of proceeds to be received 4 if ordinarily you would also be told the market 5 value of the assets to be pledged? 6 MR. C. GREEN: Object to form. 7 You may answer. 8 A. There was nothing ordinary about 9 what was happening with this, so I can't 10 comment on that. I do believe that at the time 11 I was given an indication of both the cash 12 proceeds and the market value. 13 Q. And do you recall either of those 14 two numbers? 15 A. I do not recall those numbers today, 16 no. 17 Q. And do you recall generally the 18 spread between those two numbers or the 19 haircut? 20 MR. C. GREEN: Object to form. 21 Assumes facts not in evidence, but you may 22 answer. 23 A. I don't remember what that was. 24 Q. Would that be information that you 25 would need to know in order to manage the cash</p>
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<p>1 Fleming - Highly Confidential 2 and collateral position of the firm? 3 A. We would need to understand the cash 4 amount, the proceeds to be received. I think 5 by that point in time we had lost control over 6 understanding collateral valuations and 7 collateral availability. 8 Q. And, again, lost control of 9 collateral valuations and collateral 10 availability, by that you mean you no longer 11 had visibility of those positions and values; 12 is that correct? 13 MR. C. GREEN: Object to form. 14 A. I would say that's a fair 15 description. We lost visibility, really didn't 16 understand what was available. 17 Q. And loss of visibility being only 18 because of the failure to receive feeds from 19 Chase or other reasons? 20 MR. C. GREEN: Object to form. 21 A. I think it was -- had to do with the 22 very sudden and abrupt change in business 23 activities during that week post the holding 24 company bankruptcy that caused us to -- 25 possibly our tools were not sophisticated</p>	<p>1 Fleming - Highly Confidential 2 enough to be able to respond as quickly as 3 changes were occurring, which led us to, in 4 some ways, lose control over that information. 5 Q. Were you involved at all in 6 assessing Lehman's asset -- withdrawn. 7 Were you involved at all in an 8 exercise to determine the availability of the 9 assets on Lehman's balance sheet for purchase? 10 A. No. 11 MR. C. GREEN: Object to form. 12 Q. Are you aware of any sort of 13 exercise to determine what positions were 14 available for purchase? 15 MR. C. GREEN: Object to form. And 16 can you give us a time frame on this 17 question? 18 Q. Were you aware any time after 19 September 12th of an exercise to create a list 20 of Lehman assets available for purchase? 21 A. No. I was not -- I was not informed 22 as to any aspects of a purchase agreement. 23 Q. Have you ever seen a copy of the 24 Asset Purchase Agreement that was signed on 25 September 16th and closed on September 22nd</p>

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<p>1 Fleming - Highly Confidential 2 between Lehman and Barclays? 3 MR. C. GREEN: Object to form. I'm 4 not certain the characterization is 5 correct. 6 You can answer, if you are able to. 7 A. Not that I recall. 8 Q. Have you ever seen the financial 9 schedule attached to the September 16 Asset 10 Purchase Agreement between Lehman and Barclays 11 setting forth assets and liabilities at Lehman? 12 I am trying to save time here. I can get them 13 all out. 14 A. No, I'm not. 15 MR. C. GREEN: Would it help if we 16 took a short break? We have been going for 17 quite a while. 18 MS. CARRERO: I would say if we 19 could in ten minutes take the break? 20 MR. C. GREEN: Take a break in ten 21 minutes you mean? 22 MS. CARRERO: Yes. 23 MR. C. GREEN: That would be fine. 24 It would be fine with me. 25 Would it be all right with you,</p>	<p>1 Fleming - Highly Confidential 2 Mr. Fleming? 3 THE WITNESS: It's fine. 4 Q. Was it your understanding that when 5 assets were transferred from Lehman to Barclays 6 on Thursday, September 18th, that they would be 7 returned to Lehman? 8 MR. C. GREEN: Object to form. 9 A. I didn't know the terms of the 10 transfer. 11 Q. Are you aware of a process on 12 Friday, September 19th, to locate additional 13 assets to transfer to Barclays in addition to 14 those that were transferred September 18th? 15 MR. C. GREEN: Object to form. 16 A. I was aware of a reconciliation 17 process under way. I was aware that there was 18 some form of shortfall. I don't know what that 19 form was. So that I was aware of. 20 Q. When you say "some form of 21 shortfall," do you mean under the terms of the 22 asset sale from Lehman to Barclays? 23 MR. C. GREEN: Object to form. 24 Calls for a legal conclusion. 25 You may go ahead.</p>
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<p>1 Fleming - Highly Confidential 2 A. As it relates to what I described as 3 the asset transfer. 4 Q. To clarify, the search for 5 additional assets on Friday, September 19th, 6 what you have described as a shortfall you saw 7 to be related to the September 18th transfer; 8 is that correct? 9 MR. C. GREEN: I just want to make 10 sure, he hasn't testified that there was a 11 search for additional assets at this point. 12 I think he just said he was aware of a 13 shortfall. So maybe -- 14 A. I cannot say that it was -- I had a 15 general understanding that there was a 16 shortfall, but I was not advised or informed as 17 to what that shortfall specifically referenced. 18 Q. And as a consequence of the 19 shortfall, do you know what happened? 20 A. I'm aware of, you know, a 21 reconciliation process that was launched. I 22 don't know the exact date. I don't know 23 whether it was Friday or it was Saturday, but 24 shortly after the -- probably either Thursday, 25 Thursday or Friday, to reconcile our cash and</p>	<p>1 Fleming - Highly Confidential 2 collateral positions. 3 Q. And by reconcile cash and collateral 4 positions, what do you mean? 5 A. I'm not sure how to respond. 6 Reconcile, you know, our books and records to 7 bank statements and depository statements. 8 Q. What was the intended outcome of the 9 reconciliation process? 10 MR. C. GREEN: Object to the form of 11 the question. Calls for speculation. 12 MS. CARRERO: Go ahead. Answer. 13 A. To determine, you know, what 14 happened and where we ended up. 15 Q. Was the reconciliation process also 16 to determine if there were additional assets 17 that could be transferred to Barclays? 18 MR. C. GREEN: Object to the form of 19 the question. 20 A. I believe one of the goals of the 21 reconciliation was to determine what excess was 22 available. 23 Q. And do you know if the outcome of 24 the reconciliation determined that there was 25 excess available?</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Object to form.</p> <p>3 A. I didn't perform the</p> <p>4 reconciliations, my group wasn't responsible</p> <p>5 for the reconciliations and I didn't access the</p> <p>6 reconciliations, so I am really not in a</p> <p>7 position to comment on the reconciliations</p> <p>8 themselves.</p> <p>9 Q. Do you know if as a consequence of</p> <p>10 the reconciliations or otherwise excess</p> <p>11 collateral or cash was discovered that was to</p> <p>12 be transferred to Barclays?</p> <p>13 MR. C. GREEN: Object to the form.</p> <p>14 A. I'm not aware of -- I can't recall</p> <p>15 if there were additional transfers made after</p> <p>16 that Thursday, the 18th.</p> <p>17 MS. CARRERO: Why don't we break.</p> <p>18 MR. C. GREEN: Would you like to</p> <p>19 break for lunch or --</p> <p>20 MS. CARRERO: I think that makes</p> <p>21 sense.</p> <p>22 MR. C. GREEN: Okay. Off the</p> <p>23 record.</p> <p>24 (Lunch recess was taken from 12:54</p> <p>25 to 1:57.)</p>	<p>1 Fleming - Highly Confidential</p> <p>2 CONTINUED EXAMINATION BY</p> <p>3 MS. CARRERO:</p> <p>4 Q. Good afternoon, Mr. Fleming.</p> <p>5 Before we broke for lunch we were</p> <p>6 talking about whether there were additional</p> <p>7 transfers made from Lehman to Barclays after</p> <p>8 September 18th. Do you recall that discussion?</p> <p>9 A. Yes.</p> <p>10 Q. I am putting before you what has</p> <p>11 previously been marked as Exhibit 177. Take a</p> <p>12 moment and read it, please.</p> <p>13 (Document review.)</p> <p>14 A. Okay.</p> <p>15 Q. Starting with the last e-mail or</p> <p>16 earliest in time on the last page of the</p> <p>17 exhibit, do you recall a process of preparing</p> <p>18 an opening balance sheet for Barclays to use on</p> <p>19 day 1?</p> <p>20 MR. C. GREEN: Object to the form.</p> <p>21 A. No, I was not part of that exercise.</p> <p>22 Q. Skipping to, I believe, the first</p> <p>23 e-mail in the chain that you are CC'd on from</p> <p>24 Paolo Tonucci to many and CC'ing you dated</p> <p>25 September 20th at 10:31 a.m., do you recall</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 being asked to determine whether there were</p> <p>3 15C3 assets to be transferred to Barclays?</p> <p>4 A. I recall being asked to provide some</p> <p>5 information as it relates to the assets that</p> <p>6 were segregated according to 15C3.</p> <p>7 Q. Could you explain briefly what 15C3</p> <p>8 segregated assets are?</p> <p>9 MR. C. GREEN: Object to the extent</p> <p>10 it calls for a legal conclusion.</p> <p>11 You may answer the question.</p> <p>12 A. I'm not the regulatory expert when</p> <p>13 it comes to this, but I can give you a</p> <p>14 general -- my general understanding of what the</p> <p>15 segregation requirement pertains to, and that</p> <p>16 is fully paid for customer assets whereby a</p> <p>17 broker/dealer needs to on a weekly basis</p> <p>18 calculate what that amount is as of close of</p> <p>19 business each Friday and reserve for that</p> <p>20 amount of assets on the following Tuesday and</p> <p>21 it's a weekly calculation that's performed.</p> <p>22 Q. More generally, what is your role</p> <p>23 with 15C3 segregated assets?</p> <p>24 A. My team, upon instruction from our</p> <p>25 regulatory group, would perform the calculation</p>	<p>1 Fleming - Highly Confidential</p> <p>2 and advise us what the net change was. My</p> <p>3 group was responsible for affecting movements</p> <p>4 into or out of the reserve accounts for the</p> <p>5 actual week-over-week net change.</p> <p>6 Q. And by reserve account, you mean</p> <p>7 15C3 reserve accounts; is that correct?</p> <p>8 A. There are designated accounts set up</p> <p>9 for the exclusive benefit of customers that</p> <p>10 have agreements associated with them whereby</p> <p>11 the banks have no right or lien against the</p> <p>12 assets for the customer, so those specific</p> <p>13 accounts, you have to have the reserve assets</p> <p>14 in those types of accounts.</p> <p>15 Q. In Mr. Tonucci's September 20th</p> <p>16 e-mail he indicates: "Dan, the collateral that</p> <p>17 was locked up for 15C3 needs to be transferred</p> <p>18 over the Barclays." I imagine he meant to</p> <p>19 Barclays.</p> <p>20 Do you recall if 15C3 collateral was</p> <p>21 transferred to Barclays?</p> <p>22 A. I think I already answered this</p> <p>23 question earlier. This e-mail, I believe, was</p> <p>24 already distributed as one of the exhibits. I</p> <p>25 will respond again. I am not aware of any</p>

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<p>1 Fleming - Highly Confidential 2 transfer of 15C3 assets to Barclays. 3 Q. Are you aware of calculation of 15C3 4 assets available to transfer to Barclays? 5 MR. C. GREEN: You mean other than 6 is discussed in this e-mail? 7 Q. Other than what is discussed in this 8 e-mail. 9 A. I recall an exercise to reconcile 10 our books and records post Thursday, the 18th, 11 for purposes of determining excess assets that 12 resided in the broker/dealer. You know, what 13 would be done with those assets was not 14 described to me and certainly was not clear. 15 Q. 15C3 assets being one component of 16 those assets potentially available for 17 transfer; is that accurate? 18 MR. C. GREEN: Object to form. 19 You may answer. 20 A. I believe that there was a 21 calculation, a recalculation of the reserve 22 formula as of close of business most likely 23 Friday, the 19th, but I'm not sure of the exact 24 date, but I do know that whatever that last 25 date was, they wanted to perform the</p>	<p>1 Fleming - Highly Confidential 2 calculation to determine what the proper amount 3 of segregation was or should be. 4 Q. Were you ever given a figure you 5 were trying to reach with respect to the 6 reconciliation? 7 MR. C. GREEN: Object to form. 8 A. I'm not aware of any amount related 9 to the rec. The reconciliation should result 10 in zero breaks. That's what a reconciliation 11 ultimately is. 12 Q. If the reconciliation ultimately 13 results in a positive number, is that a 14 consequence of more assets being segregated 15 than necessary under the rules? 16 MR. C. GREEN: Object to form. 17 Do you understand the question? 18 A. The question doesn't make sense to 19 me. 20 Q. Could you explain for me, is there 21 more than one type of 15C3 reserve account, one 22 for customer -- withdrawn. 23 MS. CARRERO: Give me one moment. 24 All right. 25 (Exhibit 300B, e-mail dated</p>
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<p>1 Fleming - Highly Confidential 2 September 23, 2008, Bates stamped 3 BCI-EX-(S)-00019269 and 4 BCI-EX-(S)-00019270, marked for 5 identification.) 6 Q. Mr. Fleming, you have before you 7 what's been marked Exhibit 300B, if you could 8 take a moment to review it, particularly the 9 first e-mail in the chain. 10 (Document review.) 11 A. Okay. 12 Q. In this document marked Exhibit 300B 13 there is a reference to PAIB reserve accounts 14 and customer reserve bank accounts. Could you 15 explain the difference? 16 A. There is two types of reserves. One 17 is the EBOC reserve, which is for the exclusive 18 benefit of customers. There is a second 19 calculation for PAIB, which is the proprietary 20 accounts of introducing brokers. Again, I'm 21 not an expert in the calculation, but I believe 22 that they are very similar in nature. They are 23 just covering two different types of customers. 24 Q. And the reconciliation process 25 taking place I believe you said either that</p>	<p>1 Fleming - Highly Confidential 2 Thursday or Friday, September 18th, 19th, was 3 with respect to both the EBOC and the PAIB 4 accounts; is that correct? 5 MR. C. GREEN: Object to the form of 6 the question. 7 A. The reconciliation that was being 8 performed was not -- to my understanding, was 9 not a reconciliation of the reserve accounts. 10 It was a reconciliation of our operating, our 11 normal operating bank accounts. 12 Q. Which included the reserve accounts 13 or excluded them entirely? 14 MR. C. GREEN: Object to the form. 15 A. I believe it would have excluded 16 them. 17 Q. Was there a separate recalculation 18 process with respect to the EBOC and PAIB 19 accounts? 20 A. I believe so. 21 Q. Were you involved in that 22 recalculation process? 23 A. That was the responsibility of the 24 regulatory group. 25 Q. Do you know the outcome of the</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 recalculation of the PAIB and EBOC accounts?</p> <p>3 A. I do not recall the outcome of</p> <p>4 those.</p> <p>5 Q. And you do not recall whether any</p> <p>6 excess in the EBOC and PAIB accounts subject to</p> <p>7 release were transferred to Barclays; is that</p> <p>8 correct?</p> <p>9 MR. C. GREEN: Object to the form.</p> <p>10 A. I do not recall.</p> <p>11 Q. Going back to Exhibit 300B, there is</p> <p>12 a reference to Chase being instructed not to</p> <p>13 communicate with Lehman.</p> <p>14 Do you recall if that was, in fact,</p> <p>15 the case as of September 23rd?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know the circumstances under</p> <p>18 which they had been instructed not to</p> <p>19 communicate with Lehman?</p> <p>20 MR. C. GREEN: Object to form.</p> <p>21 A. I guess I would say no, I don't. I</p> <p>22 just knew that they were instructed not to take</p> <p>23 our phone calls and not to communicate with us.</p> <p>24 Q. Is this related to the situation you</p> <p>25 described on September 18th with respect to</p>	<p>1 Fleming - Highly Confidential</p> <p>2 feeds not going through to your systems and</p> <p>3 allowing visibility of the September 18th</p> <p>4 transfer?</p> <p>5 MR. C. GREEN: Object to form.</p> <p>6 A. This relates to the exercise of</p> <p>7 reconciling our books and records.</p> <p>8 Q. Can you turn back to Exhibit 177.</p> <p>9 Turn to the second page, the first complete</p> <p>10 e-mail at the top from you dated September 20th</p> <p>11 at 5:01 p.m.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you recall sending that message?</p> <p>14 A. Now that I look at it, I do. I do</p> <p>15 recall sending this.</p> <p>16 Q. Do you recall why you sent it?</p> <p>17 A. I believe that I was requested to</p> <p>18 provide the balances in the reserve accounts.</p> <p>19 Q. And are the balances in the reserve</p> <p>20 accounts only those that are in excess of what</p> <p>21 is required under the rules?</p> <p>22 MR. C. GREEN: Object to the form of</p> <p>23 the question.</p> <p>24 A. I'm not sure I follow you.</p> <p>25 Q. My question is the balances in the</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 EBOC and PAIB accounts, are those amounts still</p> <p>3 required to be segregated or are they available</p> <p>4 for other uses?</p> <p>5 MR. C. GREEN: Object to the form of</p> <p>6 the question.</p> <p>7 A. The calculation is what determines</p> <p>8 the requirement. This is just collateral to</p> <p>9 satisfy the requirement. So you need to look</p> <p>10 at the calculation itself.</p> <p>11 Q. My question is are these amounts the</p> <p>12 excess over the requirements or is it the total</p> <p>13 amount in the accounts?</p> <p>14 MR. C. GREEN: I'm sorry, these</p> <p>15 amounts you are referencing are on page 2</p> <p>16 of Exhibit 177?</p> <p>17 Q. Exactly. The amounts being for EBOC</p> <p>18 a total of 1.73 billion, which is comprised of</p> <p>19 both cash and securities, and then securities</p> <p>20 totaling 492,707,260.65.</p> <p>21 MR. C. GREEN: Object to the form of</p> <p>22 the question.</p> <p>23 A. Without knowing what the requirement</p> <p>24 was, there is no way to determine whether there</p> <p>25 was excess or deficit based on this</p>	<p>1 Fleming - Highly Confidential</p> <p>2 information.</p> <p>3 Q. Is your e-mail suggesting an attempt</p> <p>4 to transfer the cash and securities -- I'm</p> <p>5 sorry. Withdrawn.</p> <p>6 Is your e-mail suggesting an attempt</p> <p>7 to transfer the cash then at Wells Fargo to</p> <p>8 somewhere?</p> <p>9 MR. C. GREEN: Object to the form of</p> <p>10 the question.</p> <p>11 Q. Let me rephrase.</p> <p>12 There is mention in this e-mail to</p> <p>13 moving the cash. Do you recall where it was to</p> <p>14 be moved to?</p> <p>15 A. I believe that this e-mail is</p> <p>16 referencing an attempt to release cash from the</p> <p>17 lock-up at a prior date, not necessarily the</p> <p>18 transfer of cash somewhere else.</p> <p>19 Q. And how about the statement</p> <p>20 regarding moving the securities at JPM, what is</p> <p>21 that a reference to?</p> <p>22 A. That is in reference to the extent</p> <p>23 that there was instructions provided to move</p> <p>24 the securities somewhere, wherever that may be,</p> <p>25 it was unclear to me how that could be affected</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 given that JPMorgan had blocked us out of their</p> <p>3 system and wasn't communicating with us.</p> <p>4 Q. I guess I am just not understanding</p> <p>5 how the e-mail below regarding transferring the</p> <p>6 15C3 over to Barclays is not related to the</p> <p>7 movement of cash and securities in your</p> <p>8 response e-mail. Am I understanding correctly?</p> <p>9 MR. C. GREEN: Object to the form of</p> <p>10 the question.</p> <p>11 A. I really can't comment on the prior</p> <p>12 e-mail from Mr. Tonucci referencing the</p> <p>13 transfer of the 15C3 over to Barclays.</p> <p>14 Q. So you have no recollection if you</p> <p>15 responded to his message with the EBOC and PAIB</p> <p>16 balances because there was an intention to move</p> <p>17 those over to Barclays?</p> <p>18 MR. C. GREEN: Object to the form.</p> <p>19 A. I was responding to Mr. Tonucci and</p> <p>20 advising him of what was in the account.</p> <p>21 Q. Mr. Tonucci later asks you for a</p> <p>22 contact at Wells. Do you recall if you</p> <p>23 provided that contact information?</p> <p>24 A. I believe I did.</p> <p>25 Q. And after you provided the</p>	<p>1 Fleming - Highly Confidential</p> <p>2 information regarding the accounts, is it your</p> <p>3 understanding that it was then determined a</p> <p>4 recalculation was needed?</p> <p>5 A. Can you say that one more time,</p> <p>6 repeat that?</p> <p>7 Q. If I understand your testimony</p> <p>8 correctly, you were providing in your 5:01 p.m.</p> <p>9 e-mail of September 20th the information you</p> <p>10 had on the EBOC and the PAIB accounts. Is that</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Mr. Tonucci then asks you for your</p> <p>14 contact at Wells and you believe you did</p> <p>15 provide that contact information; is that</p> <p>16 correct?</p> <p>17 A. I believe that to be the case, yes.</p> <p>18 Q. And then later on in the chain it</p> <p>19 appears as though there is a request for a</p> <p>20 recalculation to be done immediately. Do you</p> <p>21 recall there being a recalculation following?</p> <p>22 MR. C. GREEN: Following this</p> <p>23 request by Mr. Blackwell?</p> <p>24 MS. CARRERO: Following this request</p> <p>25 by Mr. Blackwell, yes.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Do you have the</p> <p>3 question in mind, Mr. Fleming?</p> <p>4 A. I do recall that there was a reserve</p> <p>5 calculation performed, yes.</p> <p>6 Q. And turning back to Exhibit 300B, do</p> <p>7 you recall if the outcome of the recalculation</p> <p>8 was a determination that there was 769 million</p> <p>9 of qualified collateral in the customer reserve</p> <p>10 bank account?</p> <p>11 A. I think there is some confusion with</p> <p>12 regards to the calculation and the assets that</p> <p>13 are in reserve accounts. The calculation is</p> <p>14 based on a variety of different things, largely</p> <p>15 driven by books and records of client balances</p> <p>16 and that calculation is performed. Part of</p> <p>17 that calculation involves the reconciliation of</p> <p>18 our operating accounts, our stock record, our</p> <p>19 bank accounts, and there is a calculation and a</p> <p>20 result from that. The collateral that's in the</p> <p>21 reserve accounts that we are describing --</p> <p>22 that's being described in these e-mails is the</p> <p>23 collateral that was there from the prior</p> <p>24 calculation. So it's the request for</p> <p>25 information on what is in the account and then</p>	<p>1 Fleming - Highly Confidential</p> <p>2 the -- what I consider to be normal course, to</p> <p>3 do a re-calc. There is -- I'm not -- I'm</p> <p>4 getting a little bit confused with what we are</p> <p>5 trying to get at with the question, I guess.</p> <p>6 Q. What was your understanding of why a</p> <p>7 re-calc was being done? Did it have to do with</p> <p>8 Mr. Tonucci's request regarding transfer of</p> <p>9 15C3 over to Barclays?</p> <p>10 MR. C. GREEN: Object to the form of</p> <p>11 the question. May call for speculation.</p> <p>12 You can answer, if you have an</p> <p>13 answer.</p> <p>14 A. In my opinion, the purpose of the</p> <p>15 calculations is to determine proper client</p> <p>16 segregation.</p> <p>17 Q. Did you have any understanding of</p> <p>18 what would be done with any excess cash or</p> <p>19 collateral no longer needed to be segregated?</p> <p>20 A. No.</p> <p>21 Q. Were you involved in any sort of</p> <p>22 process around that same time to locate assets</p> <p>23 in the non-actionable box that could be</p> <p>24 transferred over to Barclays?</p> <p>25 MR. C. GREEN: Object to the form of</p>



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<p>1 Fleming - Highly Confidential 2 the question. 3 Do you understand the question, 4 Mr. Fleming? 5 THE WITNESS: I am thinking. 6 A. I think I previously stated that I 7 wasn't involved in the -- you know, the 8 location or that reconciliation process to 9 identify unencumbered assets. 10 Q. Do you know the term Schedule B with 11 respect to the asset sale by Lehman to 12 Barclays? 13 MR. C. GREEN: Object to the form. 14 A. I've heard it referenced, but that's 15 the extent of it. 16 Q. Do you know the type of securities 17 that are listed on Schedule B? 18 A. No. 19 Q. Do you know of a process to locate 20 unencumbered assets for transfer to Barclays? 21 MR. C. GREEN: During what period of 22 time? 23 MS. CARRERO: During the week of 24 September 15th, specifically after 25 September 18th.</p>	<p>1 Fleming - Highly Confidential 2 A. I'm aware of an effort to reconcile 3 and identify unencumbered assets. 4 Q. Did you participate in that process? 5 MR. C. GREEN: Object to the form. 6 Asked and answered. 7 A. No. 8 Q. Do you know if unencumbered assets 9 were identified at the end of that 10 reconciliation process for transfer to 11 Barclays? 12 MR. C. GREEN: Objection to form. 13 A. I don't recall the outcome of those 14 reconciliations. 15 Q. And do you recall if any 16 unencumbered assets were later transferred to 17 Barclays? 18 A. I do not recall that. 19 (Exhibit 301B, e-mail dated 20 September 21, 2008, Bates stamped 10307085, 21 marked for identification.) 22 Q. Mr. Fleming, you have in front of 23 you what's been marked as Exhibit 301B. Please 24 take a moment to look a over. 25 (Document review.)</p>
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<p>1 Fleming - Highly Confidential 2 A. Okay. 3 Q. Starting with the last e-mail in the 4 chain or the earliest in time, do you recall 5 there being a call on September 20th, 2008 6 regarding the unencumbered assets? 7 A. I don't recall this specific call. 8 There were many calls occurring. 9 Q. Do you recall a series of calls 10 taking place around that time of September 20th 11 regarding a reconciliation process to determine 12 the amount of unencumbered assets that could be 13 transferred over to Barclays? 14 MR. C. GREEN: Object to the form. 15 Kelly, I'm sorry, excuse me, I am 16 wondering, do you have a copy of this 17 e-mail chain that has the entire chain? It 18 says on the second page of this document 19 that the original message is truncated and 20 it appears to break off in mid sentence. I 21 am just wondering do you have a more 22 complete version? If you don't, you don't. 23 MS. CARRERO: Five minutes. I think 24 we can find out. 25 MR. C. GREEN: Off the record for a</p>	<p>1 Fleming - Highly Confidential 2 minute then. 3 (Recess was taken from 2:37 to 4 2:38.) 5 BY MS. CARRERO: 6 Q. Mr. Fleming, what is your 7 understanding of the types of collateral that 8 would constitute unencumbered assets? 9 A. My understanding of unencumbered 10 assets are those assets that are free and clear 11 of any lien or segregation and available for 12 use. 13 Q. And any free and clear assets could 14 be found in a number of different Lehman 15 accounts; is that correct? 16 MR. C. GREEN: Object to the form. 17 A. There could be unencumbered assets 18 in multiple locations. 19 Q. And what would those locations be? 20 A. Depository accounts. 21 Q. Would depository accounts be the 22 same thing as DTC accounts? 23 A. Yes. 24 Q. And would those DTC accounts be 25 designated -- withdrawn.</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 Could you tell me your understanding</p> <p>3 of what type of assets are in DTC box 074?</p> <p>4 MR. C. GREEN: As of what point in</p> <p>5 time?</p> <p>6 MS. CARRERO: As of the time of the</p> <p>7 reconciliation searching for unencumbered</p> <p>8 assets.</p> <p>9 MR. C. GREEN: That would be this</p> <p>10 weekend of the 20th and the 21st?</p> <p>11 MS. CARRERO: Starting September</p> <p>12 18th through the 22nd of September.</p> <p>13 A. I don't know specifically what</p> <p>14 assets were in that account. It could have</p> <p>15 been any DTC eligible asset.</p> <p>16 Q. And was it your understanding that</p> <p>17 the unencumbered assets in DTC 074 were being</p> <p>18 transferred to Barclays?</p> <p>19 MR. C. GREEN: Object to the form of</p> <p>20 the question. I think it mischaracterizes</p> <p>21 his testimony or at least does not take</p> <p>22 account of his prior testimony. He said he</p> <p>23 doesn't know specifically what assets were</p> <p>24 in that account, his prior answer.</p> <p>25 Q. Answer, if you can.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. Can you repeat it.</p> <p>3 (Record read.)</p> <p>4 MR. C. GREEN: Same objection.</p> <p>5 A. I'd have to answer the question as</p> <p>6 no, it was not my understanding. I did not</p> <p>7 have an understanding of what assets were being</p> <p>8 transferred.</p> <p>9 (Exhibit 302B, e-mail dated</p> <p>10 September 22, 2008, Bates stamped</p> <p>11 BCI-EX-(S)-00018817, marked for</p> <p>12 identification.)</p> <p>13 Q. Mr. Fleming, you have before you</p> <p>14 what's been marked Exhibit 302B.</p> <p>15 Do you recall learning at some point</p> <p>16 on September 22nd that Barclays would not fund</p> <p>17 or back DTC box 074?</p> <p>18 A. I don't remember this specifically.</p> <p>19 Q. In Mr. Blackwell's e-mail to you and</p> <p>20 Mr. Tonucci on September 22nd at 9:29 a.m. what</p> <p>21 do you think he meant by saying "how do we fund</p> <p>22 this"?</p> <p>23 MR. C. GREEN: Object to the form of</p> <p>24 the question. Calls for speculation.</p> <p>25 A. I would interpret this to mean how</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 do we satisfy the net settlement obligations</p> <p>3 for that account.</p> <p>4 Q. Do you know whether Barclays</p> <p>5 ultimately funded or backed settlement</p> <p>6 obligations in DTC 074?</p> <p>7 A. I don't remember. I don't recall.</p> <p>8 Q. Were you involved in any</p> <p>9 communications with DTC regarding funding of</p> <p>10 any Lehman accounts there?</p> <p>11 MR. C. GREEN: On or after September</p> <p>12 22nd or at any time or --</p> <p>13 MS. CARRERO: Any time from</p> <p>14 September 18th onward.</p> <p>15 A. I'm not sure of the exact date, but</p> <p>16 I was contacted by DTC. I think it was the</p> <p>17 chairman of DTC who was trying to get in touch</p> <p>18 with me about the -- about satisfying the</p> <p>19 obligations on the account. I don't recall</p> <p>20 what day it was, but I do recall that they were</p> <p>21 trying to get in touch with me and I do believe</p> <p>22 I spoke to him. I believe it was Mr. Donohue.</p> <p>23 Q. Were you involved with any</p> <p>24 negotiations regarding -- withdrawn.</p> <p>25 Were you involved in negotiations</p>	<p>1 Fleming - Highly Confidential</p> <p>2 with either Barclays or DTC regarding</p> <p>3 settlement of trades at DTC?</p> <p>4 MR. C. GREEN: Object to the form.</p> <p>5 A. No, not that I recall.</p> <p>6 (Exhibit 303B, e-mail dated</p> <p>7 September 19, 2008, Bates stamped 465433,</p> <p>8 marked for identification.)</p> <p>9 Q. Mr. Fleming, you have before you</p> <p>10 what's been marked Exhibit 303B. Take a moment</p> <p>11 to review it.</p> <p>12 (Document review.)</p> <p>13 A. Okay.</p> <p>14 Q. Do you recall a pledge of about 800</p> <p>15 million in market value to Barcap on Friday,</p> <p>16 September 19th?</p> <p>17 A. I mean, I don't recall it</p> <p>18 specifically where that was.</p> <p>19 Q. Do you know why you would be copied</p> <p>20 on an e-mail regarding a transfer on Friday,</p> <p>21 September 19th?</p> <p>22 MR. C. GREEN: Object to the form of</p> <p>23 the question to the extent it calls for</p> <p>24 speculation.</p> <p>25 A. I think I was being CC'd on most</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 cash and collateral transfers.</p> <p>3 Q. Going back to Exhibit 301B, the top</p> <p>4 e-mail references an 800 number asking if it</p> <p>5 should be included in the reconciliation or</p> <p>6 unencumbered number that's being generated on</p> <p>7 September 21st.</p> <p>8 Do you know if the 800 is a</p> <p>9 reference to the Friday transfer?</p> <p>10 MR. C. GREEN: Object to your</p> <p>11 characterization of the e-mail. The e-mail</p> <p>12 speaks for itself.</p> <p>13 You may answer.</p> <p>14 A. I do not know whether the 800</p> <p>15 referenced in 301B is the same 800 referenced</p> <p>16 in 303B.</p> <p>17 Q. Do you know if the 800 referenced in</p> <p>18 301B was, in fact, included in the</p> <p>19 reconciliation resulting in an unencumbered</p> <p>20 asset number?</p> <p>21 MR. C. GREEN: Object to the form of</p> <p>22 the question.</p> <p>23 A. I do not know.</p> <p>24 Q. As one of the functions of the</p> <p>25 collateral -- cash and collateral management</p>	<p>1 Fleming - Highly Confidential</p> <p>2 group, did the group deal with the margin</p> <p>3 requirements -- withdrawn.</p> <p>4 Is the cash and collateral</p> <p>5 management group responsible for monitoring</p> <p>6 margin requirements of the exchanges?</p> <p>7 A. The cash and collateral management</p> <p>8 team was responsible for satisfying the</p> <p>9 requirements at certain exchanges.</p> <p>10 Q. And which exchanges are those?</p> <p>11 A. I can't say with precision, but I</p> <p>12 believe the FICC, the NBSCC, the OCC. That's</p> <p>13 all I can recall right now. There may have</p> <p>14 been -- I don't know whether -- I don't recall</p> <p>15 whether the futures exchanges were included,</p> <p>16 like the CME or the CBOT. I don't recall</p> <p>17 whether those were included or not.</p> <p>18 Q. And could you explain to me the</p> <p>19 process by which your group would handle margin</p> <p>20 to those exchanges?</p> <p>21 MR. C. GREEN: Object to the form.</p> <p>22 A. We would receive the margin</p> <p>23 statement from the exchange each morning and we</p> <p>24 would then either withdraw or place additional</p> <p>25 collateral with the exchange.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 Q. Do you know if any of the margin</p> <p>3 posted to the exchanges was transferred over to</p> <p>4 Barclays?</p> <p>5 MR. C. GREEN: Object to the form.</p> <p>6 A. I don't know for certain what</p> <p>7 happened with the exchanges.</p> <p>8 (Exhibit 304B, e-mail dated</p> <p>9 September 17, 2008, Bates stamped 10306758,</p> <p>10 with attached spread sheet, Bates stamped</p> <p>11 10306405, marked for identification.)</p> <p>12 Q. Mr. Fleming, you have before you</p> <p>13 what has been marked as Exhibit 304B. Please</p> <p>14 take a moment to review.</p> <p>15 (Document review.)</p> <p>16 Q. Have you had an opportunity to</p> <p>17 review?</p> <p>18 A. One more minute.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. Is the attachment to Exhibit 304B a</p> <p>22 spread sheet that is generated in the normal</p> <p>23 course of business?</p> <p>24 MR. C. GREEN: Object to the form.</p> <p>25 A. I believe the answer to that is no.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 The cash and collateral management team had a</p> <p>3 schedule for the exchanges that they were</p> <p>4 responsible for funding. The futures team</p> <p>5 within operations was responsible for funding a</p> <p>6 whole host of other margin exchanges. I think</p> <p>7 primarily international exchanges. I believe</p> <p>8 that this report is one that was created in and</p> <p>9 around that week of the 15th for us to try to</p> <p>10 get a consolidated view as to what all of our</p> <p>11 exchange margin was.</p> <p>12 Q. If you would turn your attention to</p> <p>13 the second page of the attachment to</p> <p>14 Exhibit 304B, lines 58, 59 and 60.</p> <p>15 A. Okay.</p> <p>16 Q. Regarding OCC accounts, could you</p> <p>17 tell me the difference between the customer and</p> <p>18 the house OCC accounts?</p> <p>19 MR. C. GREEN: You mean as reflected</p> <p>20 on this exhibit or --</p> <p>21 Q. As reflected on this exhibit or if,</p> <p>22 in fact, there were two separate accounts, one</p> <p>23 for a customer account and one house account.</p> <p>24 A. It's my understanding that there</p> <p>25 were two accounts.</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 Q. And could you explain to me the</p> <p>3 difference between the two OCC margin accounts?</p> <p>4 A. I'm not an expert in the margin. I</p> <p>5 didn't control the OCC processing. My</p> <p>6 understanding is that the house represents the</p> <p>7 proprietary positions and that the customer</p> <p>8 represents customer positions or the margin</p> <p>9 associated with each.</p> <p>10 Q. And would Lehman funds be used to</p> <p>11 post margin to the customer margin accounts at</p> <p>12 OCC?</p> <p>13 MR. C. GREEN: Object to the form of</p> <p>14 the question.</p> <p>15 Do you have the question in mind?</p> <p>16 THE WITNESS: Am I supposed to be</p> <p>17 answering the question?</p> <p>18 MR. C. GREEN: Do you want to read</p> <p>19 back the question.</p> <p>20 (Record read.)</p> <p>21 A. We would use firm assets to pledge</p> <p>22 to the customer requirement. There is no</p> <p>23 correlation between the customer margin and the</p> <p>24 margin that's actually collected from clients,</p> <p>25 because the margin treatment that we give</p>	<p>1 Fleming - Highly Confidential</p> <p>2 clients, such as New York Stock Exchange</p> <p>3 portfolio margin treatment, allows for the</p> <p>4 netting of options and other types of</p> <p>5 instruments that are housed within the client's</p> <p>6 account whereby the OCC is only looking at the</p> <p>7 option position, so there never is a</p> <p>8 correlation, so you could never locate the</p> <p>9 client asset applicable to a margin -- I</p> <p>10 shouldn't say never. We couldn't. We didn't.</p> <p>11 So it was firm assets that were pledged to the</p> <p>12 OCC.</p> <p>13 Q. And if you would turn your attention</p> <p>14 to column F, which is entitled IM Excess</p> <p>15 Deficit, could you explain for me what column F</p> <p>16 is tracking?</p> <p>17 A. IM stands for initial margin, which</p> <p>18 is determined by the exchange.</p> <p>19 Q. If there is an excess under IM</p> <p>20 excess deficit, is the excess available to be</p> <p>21 returned to Lehman?</p> <p>22 A. I believe so.</p> <p>23 Q. If you turn your attention to</p> <p>24 column H of Exhibit 304B, the column is headed</p> <p>25 Exchange Margin Available.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 Do you have any understanding as to</p> <p>3 the meaning of the numbers in that column?</p> <p>4 A. I don't know.</p> <p>5 Q. And do you know if the excess margin</p> <p>6 in the OCC customer and house accounts, which</p> <p>7 can be found in lines 58, 59 and 60, were</p> <p>8 growing on the 16th as opposed to the numbers</p> <p>9 on the 15th if you turn to the fourth page of</p> <p>10 the attachment and look at the same lines 58,</p> <p>11 59 and 60?</p> <p>12 MR. C. GREEN: Object to the form of</p> <p>13 the question.</p> <p>14 Q. Because of any particular event?</p> <p>15 A. I'm not sure I'm looking at the</p> <p>16 right thing. So the second --</p> <p>17 Q. So page 2 of the attachment, lines</p> <p>18 58 through 60, and then page 4 of the</p> <p>19 attachment to Exhibit 304B, lines 58 through</p> <p>20 60.</p> <p>21 A. And which columns?</p> <p>22 Q. I'm sorry, column K on page 4.</p> <p>23 A. So column F is the equivalent of</p> <p>24 column K? Is that what --</p> <p>25 MS. CARRERO: Off the record.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 (Discussion off the record.)</p> <p>3 MS. CARRERO: Withdraw the pending</p> <p>4 question.</p> <p>5 BY MS. CARRERO:</p> <p>6 Q. Mr. Fleming, are you aware of excess</p> <p>7 margin growing in the margin accounts at OCC</p> <p>8 over the week of September 15th?</p> <p>9 MR. C. GREEN: Object to the form of</p> <p>10 the question.</p> <p>11 A. I would say that I was -- nothing</p> <p>12 stood out or nothing was brought to my</p> <p>13 attention as it related to issues with -- let</p> <p>14 me rephrase that. I was not aware of issues</p> <p>15 with a growing amount of excess in the</p> <p>16 accounts, so I think it's fair to say that</p> <p>17 there was always some amount of excess in the</p> <p>18 accounts. I also think it's fair to say that</p> <p>19 there was a tremendous amount happening during</p> <p>20 that time frame, not only as it relates to, you</p> <p>21 know, positions that we were trading in or</p> <p>22 clients were trading in, but the market in</p> <p>23 general. So the volatility of, you know, the</p> <p>24 positions, not the positions but the value of</p> <p>25 those positions, was very, very significant, so</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 the fact that we had excess there doesn't come</p> <p>3 as a surprise.</p> <p>4 Q. If there is excess in the account,</p> <p>5 does that suggest any volatility in the market</p> <p>6 was in Lehman's favor in aggregate?</p> <p>7 MR. C. GREEN: Object to the form.</p> <p>8 A. I wouldn't draw any conclusion like</p> <p>9 that. All I am saying is there was, you know,</p> <p>10 unprecedented volatility in the marketplace.</p> <p>11 Q. Could you explain to me how the</p> <p>12 margin accounts at an exchange like OCC work in</p> <p>13 tandem with the position accounts?</p> <p>14 MR. C. GREEN: Object to the form.</p> <p>15 A. I cannot describe to you the</p> <p>16 calculation of margin at the exchanges that</p> <p>17 they perform. I don't know what that</p> <p>18 calculation consists of.</p> <p>19 Q. Could you explain to me how the</p> <p>20 margin account is related to any account</p> <p>21 holding exchange-traded derivatives?</p> <p>22 MR. C. GREEN: Object to the form.</p> <p>23 A. There is a margin calculation based</p> <p>24 on the positions and then there is a designated</p> <p>25 account whereby qualified assets need to be</p>	<p>1 Fleming - Highly Confidential</p> <p>2 deposited to satisfy the margin requirement.</p> <p>3 Q. So for the customer margin account</p> <p>4 at OCC there would be a related account holding</p> <p>5 any exchange-traded derivatives; is that</p> <p>6 accurate?</p> <p>7 MR. C. GREEN: Object to the form.</p> <p>8 A. There would be customer trades that</p> <p>9 correspond to the customer margin.</p> <p>10 (Exhibit 305B, e-mail dated</p> <p>11 September 23, 2008, Bates stamped</p> <p>12 BCI-EX-(S)-000191987 through</p> <p>13 BCI-EX-(S)-000191194, marked for</p> <p>14 identification.)</p> <p>15 Q. Mr. Fleming, you have before you</p> <p>16 what's been marked Exhibit 305B.</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what this document is?</p> <p>19 A. This appears to be a statement from</p> <p>20 the OCC.</p> <p>21 Q. Do you recall receiving these</p> <p>22 statements on September 23rd from Susie Chen?</p> <p>23 A. Not specifically, but it shows here</p> <p>24 that -- well, there is a memo here. I don't</p> <p>25 recall actually reviewing or doing anything</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 with these statements.</p> <p>3 Q. Do you recall attending a meeting</p> <p>4 regarding OCC margin around September 23rd?</p> <p>5 A. I don't. There were a lot of</p> <p>6 meetings happening at the time and I didn't --</p> <p>7 I wasn't actively managing the day-to-day</p> <p>8 business, the detail, so it's likely that</p> <p>9 someone else would have been attending those</p> <p>10 meetings who was more familiar with the</p> <p>11 details.</p> <p>12 Q. Do you have any idea of who would</p> <p>13 have been attending those meetings?</p> <p>14 MR. C. GREEN: Object to the form of</p> <p>15 the question. When you say "those</p> <p>16 meetings," you mean this particular meeting</p> <p>17 you are referring to or --</p> <p>18 MS. CARRERO: Mr. Fleming said that</p> <p>19 it was likely that somebody else would have</p> <p>20 been attending those meetings who was more</p> <p>21 familiar with the details. I am asking him</p> <p>22 to clarify who those individuals might have</p> <p>23 been.</p> <p>24 MR. C. GREEN: He said there were a</p> <p>25 lot of meetings.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Particularly with respect to OCC</p> <p>3 margin, who, if not you, would have attended</p> <p>4 any meetings taking place on the issue?</p> <p>5 A. It's conceivable that Craig Jones</p> <p>6 may have attended the meeting you are</p> <p>7 referencing.</p> <p>8 Q. And at this point on September 23rd</p> <p>9 are you employed by Lehman or are you employed</p> <p>10 by Barclays at this point?</p> <p>11 MR. C. GREEN: Object to the form.</p> <p>12 A. I don't know. I don't know.</p> <p>13 Q. Do you recall if at any point during</p> <p>14 the week of September 15 you received an offer</p> <p>15 of employment from Barclays?</p> <p>16 A. I recall receiving an offer of</p> <p>17 employment. I don't recall what day it was</p> <p>18 that that occurred.</p> <p>19 Q. Do you recall how you received that</p> <p>20 offer of employment?</p> <p>21 A. I received a phone call from</p> <p>22 Mr. Lowitt advising me that Barclays would like</p> <p>23 to hire me.</p> <p>24 Q. And do you recall if you received a</p> <p>25 written offer following Mr. Lowitt's call?</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 A. I did.</p> <p>3 Q. Do you recall if you received both</p> <p>4 an e-mail as well as a letter?</p> <p>5 A. I do recall that there was e-mails</p> <p>6 sent out to a number of individuals within my</p> <p>7 team, some of which received e-mails for</p> <p>8 employment, others did not. I don't recall</p> <p>9 when that e-mail was distributed or the date</p> <p>10 that I received the call from Mr. Lowitt. I'm</p> <p>11 not sure which one occurred first.</p> <p>12 (Exhibit 306B, e-mail dated</p> <p>13 September 22, 2008, Bates stamped 10295071,</p> <p>14 marked for identification.)</p> <p>15 (Exhibit 307B, letter dated</p> <p>16 September 22, 2008, Bates stamped</p> <p>17 BCI-EX-00077308 through BCI-EX-00077310,</p> <p>18 marked for identification.)</p> <p>19 Q. Mr. Fleming, you have before you</p> <p>20 what's been marked as Exhibits 306B and 307B.</p> <p>21 Are these the acceptance and offer of Barclays</p> <p>22 employment that you recall?</p> <p>23 A. This is the contract that I signed.</p> <p>24 MR. C. GREEN: And you are referring</p> <p>25 to Exhibit 307B?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. 307B.</p> <p>3 Q. And turning to the signature page,</p> <p>4 do you recall if you signed it on September</p> <p>5 27th, 2008?</p> <p>6 A. I believe I received it on a Friday.</p> <p>7 I don't know whether that was the 27th of</p> <p>8 September or not.</p> <p>9 Q. The letter is dated September 22nd.</p> <p>10 Do you recall if you received it closer to the</p> <p>11 22nd or around the time that you signed on the</p> <p>12 27th?</p> <p>13 MR. C. GREEN: Object to the form of</p> <p>14 the question. I believe his answer was he</p> <p>15 received it on a Friday, he thinks.</p> <p>16 Q. Turning your attention to</p> <p>17 Exhibit 306B, which is dated September 22nd,</p> <p>18 Eastern Standard Time 8:27 a.m., do you recall</p> <p>19 having accepted employment at Barclays by means</p> <p>20 of this e-mail at that time?</p> <p>21 A. Monday would have been -- I guess</p> <p>22 based on this e-mail, yes, I accepted at this</p> <p>23 time.</p> <p>24 Q. And turning back to 307B, your offer</p> <p>25 letter, does this letter accurately reflect the</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 terms of your employment at Barclays?</p> <p>3 A. Yes, it appears so.</p> <p>4 Q. And were these terms commensurate</p> <p>5 with your compensation you were receiving from</p> <p>6 Lehman at the time?</p> <p>7 MR. C. GREEN: Object to the form of</p> <p>8 the question.</p> <p>9 A. Can you ask that question another</p> <p>10 way? Could you clarify?</p> <p>11 Q. Are the terms of your Barclays</p> <p>12 employment letter the same as the compensation</p> <p>13 package you had at the time with Lehman?</p> <p>14 A. Similar. Not the same.</p> <p>15 Q. How did they differ?</p> <p>16 A. I believe that this is a percentage</p> <p>17 higher than the 2007 year end compensation.</p> <p>18 Q. The [REDACTED] cash bonus that was to</p> <p>19 be awarded for 2008, was that the amount you</p> <p>20 were to receive from Lehman as a bonus in 2008?</p> <p>21 MR. C. GREEN: Object to the form of</p> <p>22 the question.</p> <p>23 A. I don't know the answer to that.</p> <p>24 Q. You had not at the time of this</p> <p>25 offer already received a bonus for 2008 from</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Lehman; is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And the salary which is listed here</p> <p>5 as [REDACTED] is that the same as your salary in</p> <p>6 2008 at Lehman?</p> <p>7 A. Yes.</p> <p>8 MR. C. GREEN: Just for the record,</p> <p>9 I would like to assure Mr. Fleming that we</p> <p>10 have an agreement that the entire</p> <p>11 transcript is to be designated highly</p> <p>12 confidential under the protective order,</p> <p>13 including this testimony about</p> <p>14 compensation, and then the parties will</p> <p>15 revisit that as necessary within a week.</p> <p>16 That comports with your</p> <p>17 understanding, doesn't it, Kelly?</p> <p>18 MS. CARRERO: Yes.</p> <p>19 Q. Going back to what has been marked</p> <p>20 as Exhibit 305B, does the review of your offer</p> <p>21 and acceptance of Barclays employment refresh</p> <p>22 your recollection whether as of September 23rd</p> <p>23 you were already an employee of Barclays?</p> <p>24 MR. C. GREEN: Do you understand the</p> <p>25 question?</p>

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<p>1 Fleming - Highly Confidential 2 THE WITNESS: No. 3 MR. C. GREEN: Do the documents you 4 just looked at refresh your recollection 5 that as of the 23rd you were or were not an 6 employee of Barclays? Do they change your 7 recollection as to that question? 8 A. Not 305B. 9 Q. You can answer the question without 10 305B. My question is as of September 23rd had 11 you begun employment with Barclays? 12 A. It would appear, yes, that as of the 13 22nd of September is when I accepted the offer 14 of employment from Barclays. 15 Q. And looking at 305B, can you walk me 16 through some of the information on the OCC 17 account statements starting with the account 18 information in the left-hand corner, the first 19 being OCC 00074 C. 20 MR. C. GREEN: Is there a question? 21 Q. Do you know if this is the OCC 22 customer account we had discussed with 23 reference to Exhibit 304B? 24 A. Again, I'm not -- I didn't deal with 25 these statements on a day-to-day basis. It</p>	<p>1 Fleming - Highly Confidential 2 would appear to me based on my read of this 3 document at this time that the second page to 4 305B is representative of the 074 customer 5 account. 6 Q. The second page being tier account 7 074 F, as in Frank? 8 A. That would appear to me to be 074 9 firm, which I will make a leap of faith is 10 equivalent to what is also described as house. 11 Q. And 074 C, which I have as the first 12 page of the exhibit, of the attachment to the 13 exhibit, would be the customer? 14 MR. C. GREEN: Object to the form. 15 Q. Is that correct? 16 A. That's what it would appear to be at 17 this time, yes. Again, I was not the 18 individual who was managing this process, nor 19 reviewing these documents on a day-to-day 20 basis. 21 (Exhibit 308B, e-mail dated 22 September 25, 2008, Bates stamped 23 BCI-EX-(S)-00011649 through 24 BCI-EX-(S)-00011651, marked for 25 identification.)</p>
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<p>1 Fleming - Highly Confidential 2 Q. Mr. Fleming, you have before you 3 what has been marked as Exhibit 308 B. Please 4 take a moment to review. 5 (Document review.) 6 A. Okay. 7 Q. Mr. Fleming, do you recall learning 8 at some point that all the margin previously 9 posted to the OCC with respect to accounts 10 number 74, 84 and 273 would be transferred to 11 Barclays? 12 MR. C. GREEN: Object to the form of 13 the question. 14 A. I recall at the time that there was 15 some ambiguity and uncertainty as to the status 16 of the OCC accounts. It was something that I, 17 you know, was not actively engaged in. 18 Q. Do you know who would have been 19 actively engaged in any ambiguity regarding the 20 OCC accounts? 21 MR. C. GREEN: Object to the form of 22 the question. I think you mischaracterized 23 his testimony. I don't think he was 24 stating that people were actively engaged 25 in an ambiguity, but perhaps he was.</p>	<p>1 Fleming - Highly Confidential 2 Do you have the question in mind, 3 Mr. Fleming? 4 A. It is possible that some of the 5 others listed on this e-mail may, in fact, have 6 more information, who could provide more 7 clarity around some of the discussions that 8 were going on at that time. I do know that 9 there was a significant amount of 10 reconciliation that was going on at that time. 11 I believe that there was an option expiration 12 date on Friday, I believe it was the 19th, and 13 again, you know, our books and records were 14 not -- you know, were not reconciled. There 15 was a lot of effort to try and figure out, 16 again, what our positions were at close of 17 business the 19th. 18 Q. Do you recall being asked for any 19 information about the margin amounts in the 20 accounts on the 19th or prior to the 22nd in 21 order to transfer additional value to Barclays? 22 MR. C. GREEN: Object to the form. 23 A. I recall there being a lot of 24 questions around the OCC, broadly. 25 Q. Could you give me examples of the</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 type of questions being asked about the OCC?</p> <p>3 A. There were questions that were being</p> <p>4 asked as to, you know, what our requirements</p> <p>5 were, you know, what collateral was posted.</p> <p>6 The status of the accounts in terms of, you</p> <p>7 know, were they active, were they not active.</p> <p>8 Who had ownership of the accounts. Were they a</p> <p>9 Lehman account, were they a Barclays account.</p> <p>10 The individuals that I had spoken to were back</p> <p>11 office people similar to myself who were not</p> <p>12 party to any discussions around agreements that</p> <p>13 had been made, so...</p> <p>14 Q. Around what time were these</p> <p>15 questions about the OCC accounts being made?</p> <p>16 MR. C. GREEN: Mr. Fleming, I just</p> <p>17 want to caution you that if there were any</p> <p>18 inquiries of you from counsel for Barclays,</p> <p>19 lawyers for Barclays about these issues or</p> <p>20 any other issues, those inquiries should be</p> <p>21 left out of your testimony, because they</p> <p>22 are privileged.</p> <p>23 MS. CARRERO: We are talking prior</p> <p>24 to the 22nd at this point.</p> <p>25 MR. C. GREEN: I thought you were</p>	<p>1 Fleming - Highly Confidential</p> <p>2 asking about the week of the 22nd after</p> <p>3 Mr. --</p> <p>4 Q. I am currently asking about when</p> <p>5 these questions about the OCC accounts arise,</p> <p>6 which I believe your prior testimony indicates</p> <p>7 it was around the 19th, but I would like to</p> <p>8 clarify exactly when these discussions are</p> <p>9 taking place.</p> <p>10 MR. C. GREEN: Let me just make</p> <p>11 clear for the record then I would like for</p> <p>12 you to not testify about any discussions</p> <p>13 you had after you became a Barclays</p> <p>14 employee with lawyers for Barclays about</p> <p>15 the OCC or anything else.</p> <p>16 That said, you can go ahead and</p> <p>17 answer the question to the extent you are</p> <p>18 able to do so.</p> <p>19 So your question is about before the</p> <p>20 22nd is the question that's pending?</p> <p>21 Q. My question pending is regarding</p> <p>22 questions being asked about the OCC accounts.</p> <p>23 When do those questions begin to arise?</p> <p>24 A. I can't say for certain. I think</p> <p>25 post -- post the 19th.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 Q. That weekend prior to the closing of</p> <p>3 the sale to Barclays?</p> <p>4 A. I don't know when the sale closed.</p> <p>5 I don't know the term --</p> <p>6 Q. Prior to your becoming an employee</p> <p>7 at Barclays?</p> <p>8 A. I can't say. I can't say when. I</p> <p>9 mean, there was many, many questions about many</p> <p>10 different topics. Certainly in the week</p> <p>11 leading up to the 19th close of business, you</p> <p>12 know, we were just trying to get a handle on</p> <p>13 what the positions were, what was happening and</p> <p>14 so forth. You know, subsequent to that then</p> <p>15 after the SIPC bankruptcy there were questions</p> <p>16 around reconciliation and other things like</p> <p>17 that.</p> <p>18 Q. Going back to Exhibit 305B, if we</p> <p>19 could go to the third page of the attachment,</p> <p>20 do you know what the M after account 074 stands</p> <p>21 for?</p> <p>22 A. I believe the M stands for market</p> <p>23 maker.</p> <p>24 Q. And how is the market maker account</p> <p>25 different from the customer and house accounts?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know how account 74 differs</p> <p>4 from account 84 which starts on the next page</p> <p>5 of the attachment to Exhibit 305B?</p> <p>6 MR. C. GREEN: Object to the form.</p> <p>7 A. I don't.</p> <p>8 Q. Same question with respect to</p> <p>9 account 273, which begins a couple of pages</p> <p>10 later in the attachment to 305B?</p> <p>11 MR. C. GREEN: I'm sorry, I don't</p> <p>12 see that in the copy that I have. Oh, 273.</p> <p>13 I'm sorry. I have it now.</p> <p>14 Q. I am referencing the page that's</p> <p>15 Bates stamped BCI-EX-(S)-00019193 which has</p> <p>16 account 273.</p> <p>17 A. I don't know what 273 C is</p> <p>18 representative of.</p> <p>19 Q. And looking at the information on</p> <p>20 any of these pages in the attachment, could you</p> <p>21 explain to me the excess deficit line and the</p> <p>22 meaning of it?</p> <p>23 MR. C. GREEN: Object to the form.</p> <p>24 The meaning of the line on each of these</p> <p>25 pages?</p>



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<p>1 Fleming - Highly Confidential 2 MS. CARRERO: Yes. 3 A. No. Again, I was not dealing with 4 these statements on a day-to-day basis. It 5 would be speculation for me to provide an 6 explanation on what that line item actually 7 means. 8 Q. So it's your testimony that you are 9 unaware of what at the time these statements 10 are sent on September 23 the excess margin in 11 any of the three accounts, 074, 084 and 273, 12 with respect to both customer and firm accounts 13 were at that time? 14 MR. C. GREEN: Object to the 15 question. I think it mischaracterizes his 16 testimony. 17 You may answer. 18 A. I cannot say with certainty what the 19 figures represent. 20 Q. But my question is a little 21 different. Are you aware of there having been 22 excess in any of the OCC margin accounts 23 reflected on these statements as of September 24 23rd? 25 MR. C. GREEN: Object to the form.</p>	<p>1 Fleming - Highly Confidential 2 Do you have that question in mind, 3 Mr. Fleming? That's a different question. 4 A. I am trying to interpret that. Can 5 you repeat that one more time? I'm sorry. 6 MS. CARRERO: Can you. 7 (Record read.) 8 A. At the time I don't recall being 9 aware of the fact that there was, you know, 10 excess in the amount of the figures listed in 11 this document. 12 Q. Did you later become aware that 13 there were excess in the accounts at OCC? 14 A. I don't recall it being, you know, 15 an issue that was brought to my attention. 16 Q. We should be wrapping up. The last 17 questions I wanted to ask you were about your 18 current employment. 19 Are you currently employed by 20 Barclays? 21 A. Yes. 22 Q. And what is your position there? 23 A. I am the U.S. head of treasury 24 operations. 25 Q. And what are your duties as U.S.</p>
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<p>1 Fleming - Highly Confidential 2 head of treasury operation? 3 A. They are similar to that of the 4 function performed at Lehman as described in 5 the early part of this interview. 6 Q. And who do you report to? 7 A. I report to Fraser MacKenzie, who is 8 the global head of treasury operations. 9 Q. And did you receive by the date 10 indicated in your offer letter, which was 11 Exhibit 307B, the compensation enumerated 12 therein that was to be paid in February 2009? 13 A. The 2008 guaranteed cash bonus, yes. 14 MS. CARRERO: Give me five minutes. 15 (Recess was taken from 3:57 to 16 4:07.) 17 MS. CARRERO: Mr. Fleming, I think 18 we are done for the day. I am going to 19 pass along the deposition to Hughes 20 Hubbard, counsel for the SIPA trustee. 21 EXAMINATION BY 22 MR. ROTHMAN: 23 Q. Good afternoon. 24 A. Good afternoon. 25 Q. My name is Seth Rothman. We met</p>	<p>1 Fleming - Highly Confidential 2 earlier. I represent the trustee that's been 3 appointed to liquidate LBI under the SIPA 4 statute. 5 I'd like to follow up and ask you a 6 few questions about the transaction between 7 Barclays and Lehman Brothers by which Barclays 8 purchased certain assets of LBI. Do you know 9 the transaction that I mean? 10 A. Again, as previously stated, I 11 wasn't party to any of those conversations 12 surrounding the asset purchases. 13 Q. Understood, but as you sit here 14 today, you are aware that there was in 15 September of 2008 a deal by which Barclays 16 purchased certain assets of Lehman Brothers; 17 right? I just want to make sure we are on the 18 same page. 19 A. Yes, I am aware that there was a 20 purchase. 21 Q. Okay. And you have told us already 22 that you had no involvement in negotiating that 23 deal; correct? 24 A. That is correct. 25 Q. And I think you said that as best</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 you can recall you learned of that deal when it</p> <p>3 was announced in the press. Is that true?</p> <p>4 A. I believe that to be the case.</p> <p>5 Q. And you have never seen a copy of</p> <p>6 the Asset Purchase Agreement?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Does the term "Clarification Letter"</p> <p>9 mean anything to you?</p> <p>10 A. I've heard it used, but it doesn't</p> <p>11 mean anything to me.</p> <p>12 Q. Have you ever seen a copy of the</p> <p>13 Clarification Letter?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. You said that you have seen it used?</p> <p>16 A. I've heard it.</p> <p>17 Q. While you were at Lehman Brothers?</p> <p>18 A. I don't remember when, but it</p> <p>19 probably was when I was with Barclays. I don't</p> <p>20 recall the term "Clarification Letter" being</p> <p>21 used when it was still Lehman.</p> <p>22 Q. Do you recall the context in which</p> <p>23 it came up?</p> <p>24 A. I don't.</p> <p>25 Q. Do you remember who mentioned it to</p>	<p>1 Fleming - Highly Confidential</p> <p>2 you?</p> <p>3 A. I don't.</p> <p>4 MR. C. GREEN: Give me a minute to</p> <p>5 object.</p> <p>6 THE WITNESS: Sorry.</p> <p>7 MR. C. GREEN: Not that his</p> <p>8 questions aren't great, but...</p> <p>9 Q. While you were still at Lehman did</p> <p>10 you have any understanding of the economics of</p> <p>11 the deal?</p> <p>12 A. No.</p> <p>13 Q. You didn't know what Barclays was</p> <p>14 going to be paying in the deal?</p> <p>15 A. I knew what everyone else knew</p> <p>16 publicly. The timing of that, whenever that</p> <p>17 came out in the press.</p> <p>18 Q. What did you learn when you saw it</p> <p>19 in the press? You say you knew what everybody</p> <p>20 else new publicly, so tell me what you knew.</p> <p>21 MR. C. GREEN: Object to the form.</p> <p>22 A. That Barclays had purchased Lehman</p> <p>23 Brothers' North American investment banking</p> <p>24 operations.</p> <p>25 Q. Did you have any knowledge with</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 respect to what they were paying for those</p> <p>3 operations?</p> <p>4 MR. C. GREEN: Object. Asked and</p> <p>5 answered.</p> <p>6 A. I don't recall the exact amount. I</p> <p>7 believe it was a billion and three quarters or</p> <p>8 something to that effect, I think.</p> <p>9 Q. Did you have any understanding of</p> <p>10 what assets Barclays was going to be getting?</p> <p>11 MR. C. GREEN: You mean -- excuse</p> <p>12 me. Do you mean other than he obtained</p> <p>13 from the press?</p> <p>14 Q. At all. While you were at Lehman</p> <p>15 did you have any understanding of what assets</p> <p>16 Barclays was going to be getting in the deal?</p> <p>17 A. While at Lehman? I don't believe</p> <p>18 so, no.</p> <p>19 Q. Did you have any understanding about</p> <p>20 what liabilities Barclays might be assuming as</p> <p>21 part of the deal?</p> <p>22 A. While at Lehman Brothers?</p> <p>23 Q. While you were at Lehman Brothers.</p> <p>24 A. I don't believe so, no.</p> <p>25 Q. After you left Lehman Brothers and</p>	<p>1 Fleming - Highly Confidential</p> <p>2 joined Barclays, did you learn any of these</p> <p>3 things?</p> <p>4 MR. C. GREEN: Object to the form.</p> <p>5 A. There is certainly rumors and</p> <p>6 hearsay, but I cannot confirm, because there</p> <p>7 was not a source that was providing me this</p> <p>8 information who was close enough to the actual</p> <p>9 negotiation or details to provide that</p> <p>10 information.</p> <p>11 Q. Do you have anything particular in</p> <p>12 mind that you were referring to when you say</p> <p>13 that there were rumors that you heard?</p> <p>14 A. The building, 745 Seventh Avenue,</p> <p>15 was part of the deal, it came along with the</p> <p>16 operations. There was the I guess what would</p> <p>17 be considered furniture, fixtures, technology,</p> <p>18 that all was part of the deal.</p> <p>19 Q. Anything else that you heard?</p> <p>20 A. It was rumored that there was</p> <p>21 liabilities associated with compensation that</p> <p>22 went along with the purchase agreement.</p> <p>23 Q. Anything else?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. While you were at -- I think I know</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 the answer to this, but while you were at</p> <p>3 Lehman Brothers I take it you never saw any</p> <p>4 kind of balance sheet or scorecard showing the</p> <p>5 assets and the liabilities that would be</p> <p>6 involved in the deal?</p> <p>7 MR. C. GREEN: Object to the form.</p> <p>8 Asked and answered.</p> <p>9 A. No.</p> <p>10 Q. Did you ever hear there was a court</p> <p>11 hearing relating to the deal?</p> <p>12 A. While an employee at Lehman?</p> <p>13 Q. At any time.</p> <p>14 MR. C. GREEN: Putting aside if you</p> <p>15 will, please, what you have learned solely</p> <p>16 from counsel.</p> <p>17 A. The question is was I aware that</p> <p>18 there were --</p> <p>19 Q. Did you ever hear anything about a</p> <p>20 court hearing relating to the deal?</p> <p>21 A. I read about that in the paper.</p> <p>22 Q. After it happened? It's not a trick</p> <p>23 question.</p> <p>24 A. After it happened they talked about</p> <p>25 there needing to be follow-up with Judge Peck</p>	<p>1 Fleming - Highly Confidential</p> <p>2 and bankruptcy court, things of that nature.</p> <p>3 Q. While you were at Lehman did you</p> <p>4 have an understanding that the bankruptcy court</p> <p>5 needed to approve the deal?</p> <p>6 A. I was aware of that at some point,</p> <p>7 but I don't know exactly when that was.</p> <p>8 Q. Let's change topics and talk a</p> <p>9 little bit more about the 15C3 calculation.</p> <p>10 (Exhibit 309B, e-mail dated</p> <p>11 9-20-2008, marked for identification.)</p> <p>12 Q. I will mark as Exhibit 309B an</p> <p>13 e-mail string. It's three pages long. The top</p> <p>14 e-mail is an e-mail from you to Emil Cornejo,</p> <p>15 among other people, and it's dated Saturday,</p> <p>16 September 20th, 2008.</p> <p>17 MR. C. GREEN: Take your time,</p> <p>18 Mr. Fleming, to read the entire string.</p> <p>19 Q. Feel free to read the entire e-mail.</p> <p>20 I am only going to ask you about the top e-mail</p> <p>21 on the first page.</p> <p>22 (Document review.)</p> <p>23 A. Okay.</p> <p>24 Q. Who is -- first of all, do you</p> <p>25 recall sending this e-mail to Mr. Cornejo?</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 A. Yes, I do.</p> <p>3 Q. And who is Mr. Cornejo?</p> <p>4 A. Mr. Cornejo worked in the creditor</p> <p>5 relations group within the treasury</p> <p>6 organization at Lehman Brothers.</p> <p>7 Q. Do you remember why you e-mailed</p> <p>8 Mr. Cornejo?</p> <p>9 A. We were attempting to get a contact</p> <p>10 at Wells Fargo.</p> <p>11 Q. And this was the \$1 billion in cash</p> <p>12 that was at Wells Fargo?</p> <p>13 MR. C. GREEN: Object to the form of</p> <p>14 the question.</p> <p>15 A. We were seeking a contact at Wells</p> <p>16 Fargo in relation to the 1 billion deposit of</p> <p>17 cash that we had with them for 15C3.</p> <p>18 Q. Wells Fargo had a money market</p> <p>19 account; correct?</p> <p>20 MR. C. GREEN: Object to the form.</p> <p>21 A. I don't recall the form of it. 15C3</p> <p>22 can take many forms. It's possible that we had</p> <p>23 a money market fund.</p> <p>24 Q. Do you recall there was an MMDA</p> <p>25 account at Wells Fargo?</p>	<p>1 Fleming - Highly Confidential</p> <p>2 A. That sounds right. That sounds</p> <p>3 right.</p> <p>4 Q. And you write to Mr. Cornejo: "We</p> <p>5 have the SEC prepared to support our request."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Why are you telling that to</p> <p>9 Mr. Cornejo?</p> <p>10 A. I guess because Wells had indicated</p> <p>11 that they would not release funds.</p> <p>12 Q. Do you need the SEC to authorize the</p> <p>13 release of these funds?</p> <p>14 A. The SEC, in particular Mike</p> <p>15 Macchiaroli, was working alongside of us in the</p> <p>16 days prior to bankruptcy, so it is not unusual</p> <p>17 here for me to be referencing the SEC. They</p> <p>18 were on site. Mr. Macchiaroli was up from</p> <p>19 Washington. He was in our offices. We were</p> <p>20 liaising with them on a daily basis. That is</p> <p>21 not usual. It's very unusual. They had a</p> <p>22 staff of people in our building.</p> <p>23 Q. The 15C3 funds were locked up for</p> <p>24 the protection of customers; correct?</p> <p>25 A. That is correct.</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 Q. Do you ordinarily need the</p> <p>3 permission of the SEC to release funds from</p> <p>4 those accounts?</p> <p>5 A. No.</p> <p>6 Q. Did you need permission from the SEC</p> <p>7 at this point in time, September 20th?</p> <p>8 A. I don't recall what the outcome of</p> <p>9 this was. I do know that Wells Fargo had</p> <p>10 indicated to us that they would not be able to</p> <p>11 release funds upon our request.</p> <p>12 Q. I think you said you thought that</p> <p>13 was because of the bankruptcy filing?</p> <p>14 MR. C. GREEN: Object to the form.</p> <p>15 I'm not certain he did say that.</p> <p>16 MR. ROTHMAN: That's why I am</p> <p>17 asking.</p> <p>18 A. Can you repeat the question.</p> <p>19 Q. Do you have any understanding or</p> <p>20 knowledge as to why Wells Fargo wasn't</p> <p>21 releasing those funds?</p> <p>22 MR. C. GREEN: Apart from what's</p> <p>23 indicated in this e-mail?</p> <p>24 Q. As you sit here today. Do you</p> <p>25 remember why it was that the funds weren't</p>	<p>1 Fleming - Highly Confidential</p> <p>2 released? Did you ever hear a reason for that?</p> <p>3 A. Yes. I am trying to recall what was</p> <p>4 said. I do believe that it was in reference</p> <p>5 to, you know, SIPC and/or, you know, bankruptcy</p> <p>6 filing.</p> <p>7 Q. Did you hear that from somebody?</p> <p>8 A. I believe I heard that from somebody</p> <p>9 from Wells.</p> <p>10 Q. Do you remember who?</p> <p>11 A. I do not.</p> <p>12 Q. Okay, you can put that document to</p> <p>13 the side.</p> <p>14 Let me ask you to dig out of your</p> <p>15 pile the exhibit that was marked as Exhibit 177</p> <p>16 at a prior deposition. The first e-mail is</p> <p>17 from Alastair Blackwell to a group of people.</p> <p>18 A. All right.</p> <p>19 Q. If you turn to the top of the second</p> <p>20 page -- of course, feel free to look back over</p> <p>21 the entire string, if you need to, but I am</p> <p>22 only going to ask you about the e-mail at the</p> <p>23 top. This is from Paolo Tonucci to you. He</p> <p>24 tells you: "Mike Macchiaroli has agreed to</p> <p>25 release and there is a letter to provide to</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 them." Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And do you recognize Mike</p> <p>5 Macchiaroli as the Mike at the SEC?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Did you ever see a letter from him</p> <p>8 relating to the release of the funds at Wells</p> <p>9 Fargo?</p> <p>10 A. I don't recall seeing a letter.</p> <p>11 Q. Did you follow up with Wells Fargo</p> <p>12 regarding the release of those funds?</p> <p>13 A. I don't believe I did.</p> <p>14 Q. Do you know if anybody did?</p> <p>15 A. I don't recall.</p> <p>16 MR. ROTHMAN: You can put that</p> <p>17 document to the side.</p> <p>18 Let me mark as the next exhibit it</p> <p>19 will be an e-mail from Paolo Tonucci. It's</p> <p>20 a string. The top e-mail is from</p> <p>21 Mr. Tonucci to you and Anthony Savoca.</p> <p>22 Just for the record, the Bates stamp on the</p> <p>23 first page is 19297.</p> <p>24 (Exhibit 310B, e-mail dated</p> <p>25 September 23, 2008, Bates stamped</p>	<p>1 Fleming - Highly Confidential</p> <p>2 BCI-EX-(S)-00019297 and</p> <p>3 BCI-EX-(S)-00019298, marked for</p> <p>4 identification.)</p> <p>5 MR. C. GREEN: Take your time.</p> <p>6 (Document review.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 Q. The first e-mail in the string is</p> <p>9 from Anthony Savoca to -- the e-mail is</p> <p>10 addressed to Mr. Burke, you, and I assume</p> <p>11 that's Mr. Stucchio. Is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And also to Mr. Tonucci?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Savoca actually addresses the</p> <p>16 text of the e-mail to Mr. Burke; correct?</p> <p>17 A. That's what it appears.</p> <p>18 Q. Who is Bill Burke?</p> <p>19 A. Mr. Burke worked in the regulatory</p> <p>20 team at Lehman Brothers.</p> <p>21 Q. That's the same team as</p> <p>22 Mr. Stucchio?</p> <p>23 A. That is correct.</p> <p>24 Q. Do you see in the first line of his</p> <p>25 e-mail Mr. Savoca refers to a conversation that</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 took place that morning, and my only question</p> <p>3 to you about that is were you -- did you</p> <p>4 participate in that conversation?</p> <p>5 A. I don't recall participating in that</p> <p>6 conversation.</p> <p>7 Q. Do you recall having any</p> <p>8 conversations with Mr. Savoca regarding the</p> <p>9 15C3 customer and PAIB reserve bank accounts?</p> <p>10 A. I do not.</p> <p>11 Q. Do you see in Mr. Savoca's e-mail to</p> <p>12 Mr. Burke, which is then -- he then forwards on</p> <p>13 to you and Mr. Fleming, he writes: "LBI is in</p> <p>14 SIPC liquidation and based upon that no moneys</p> <p>15 and/or securities may be removed from the</p> <p>16 above-stated reserve bank accounts without the</p> <p>17 approval of Mr. John Gibbons, the SIPC trustee</p> <p>18 for LBI." Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Was that your understanding at this</p> <p>21 time?</p> <p>22 MR. C. GREEN: The time being</p> <p>23 September 23rd?</p> <p>24 MR. ROTHMAN: Correct.</p> <p>25 A. Yes.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Even though he writes "Mr. John</p> <p>3 Gibbons," I will represent to you that the</p> <p>4 trustee is actually named Jim Giddens. Did you</p> <p>5 know that?</p> <p>6 A. Yes, I did.</p> <p>7 MR. ROTHMAN: You can put that</p> <p>8 aside, Mr. Fleming. We will move on.</p> <p>9 Mark as the next exhibit a</p> <p>10 multi-page document. It's an e-mail from</p> <p>11 Kendall McLaughlin to Alex Crepeau and</p> <p>12 Alastair Blackwell at the top and there is</p> <p>13 an attachment. The Bates number on the</p> <p>14 first page is 4061.</p> <p>15 Q. Mr. Fleming, you can take as much</p> <p>16 time as you need to look through this. I am</p> <p>17 going to mostly ask you about the e-mail, but I</p> <p>18 will have a couple of questions about the</p> <p>19 attachment.</p> <p>20 (Exhibit 311B, e-mail dated</p> <p>21 September 23, 2008, Bates stamped</p> <p>22 BCI-EX-(S)-00004061 and</p> <p>23 BCI-EX-(S)-00004062, with attached Lehman</p> <p>24 Brothers, Inc. Customer/PAIB Reserve</p> <p>25 Analysis, marked for identification.)</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 (Document review.)</p> <p>3 A. Okay.</p> <p>4 Q. On the cover page there is an e-mail</p> <p>5 from Bill Burke to Mr. Stucchio and a number of</p> <p>6 people to which you are a CC; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. This is on Monday, September 22nd?</p> <p>9 A. That's what it appears, yes.</p> <p>10 Q. Do you recall receiving this</p> <p>11 particular e-mail from Mr. Burke?</p> <p>12 A. This doesn't stick out in memory.</p> <p>13 Q. You see he starts off by telling</p> <p>14 everyone that: "The following are the latest</p> <p>15 results for our customer and PAIB reserve</p> <p>16 calculations as of September 19th." Then he</p> <p>17 gives some figures, and beneath the figures he</p> <p>18 notes: "The following assumptions or open</p> <p>19 issues are relevant to the above calculations."</p> <p>20 Do you see number 1 there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. That talks about an MTS</p> <p>23 computation is not including 42 billion</p> <p>24 overdrafts with Chase.</p> <p>25 Can you tell me what an MTS</p>	<p>1 Fleming - Highly Confidential</p> <p>2 computation is?</p> <p>3 A. MTS is a system.</p> <p>4 Q. And the information in that system</p> <p>5 is part of the 15C3 computation?</p> <p>6 A. I'm not responsible for the comp,</p> <p>7 nor are my people responsible for the comp, so</p> <p>8 I can't answer that definitively.</p> <p>9 Q. It says: "The internal records</p> <p>10 reflect a book credit and those of Chase are</p> <p>11 inconclusive." Do you understand what that</p> <p>12 means?</p> <p>13 A. I believe so.</p> <p>14 Q. What does that mean to you?</p> <p>15 A. It means that the internal records</p> <p>16 reflect a book credit and the information Chase</p> <p>17 was providing to us was inconclusive, that they</p> <p>18 were erratic and unreliable.</p> <p>19 Q. The next sentence says: "Dan</p> <p>20 Fleming and Paolo" -- that's Mr. Tonucci;</p> <p>21 correct?</p> <p>22 A. I would assume so, yes.</p> <p>23 Q. "Had represented that these amounts</p> <p>24 should represent secure financing and are</p> <p>25 probably not an overdraft with the bank," and</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 then this parentheses it says "overdrafts are a</p> <p>3 formula credit item," close parentheses.</p> <p>4 As you sit here today, do you have</p> <p>5 any recollection of making a representation</p> <p>6 along these lines?</p> <p>7 A. I explained to -- and I don't know</p> <p>8 who it was, it may have been Mr. Stucchio, it</p> <p>9 may have been Mr. Burke. I explained to people</p> <p>10 that we had taken out a \$32 billion loan with</p> <p>11 JPMorgan Chase on Thursday, close of business</p> <p>12 Thursday, the 18th, which wound up being early</p> <p>13 morning Friday, and that Friday morning Chase</p> <p>14 locked us out of their systems and stopped</p> <p>15 communicating with us. What happened on Friday</p> <p>16 at Chase, I could not tell you what happened,</p> <p>17 because I did not have access to that</p> <p>18 information, and that was my description of the</p> <p>19 events. The 42 number, I told him I don't know</p> <p>20 how you get to 42. I know a number of -- I'm</p> <p>21 sorry, it was 23. Approximately 23 is what I</p> <p>22 told him.</p> <p>23 MR. C. GREEN: So you are saying</p> <p>24 instead of 32 it was 23?</p> <p>25 A. It wasn't 32, it was 23, that's</p>	<p>1 Fleming - Highly Confidential</p> <p>2 correct.</p> <p>3 Q. So Thursday night, just so we are</p> <p>4 clear, LBI obtained a \$23 billion loan from</p> <p>5 JPMorgan Chase?</p> <p>6 A. That was my understanding,</p> <p>7 approximately 23 billion.</p> <p>8 Q. How do you know that? Were you</p> <p>9 involved in obtaining that loan?</p> <p>10 A. Yes.</p> <p>11 Q. What did you do?</p> <p>12 A. I requested a loan from JPMorgan</p> <p>13 Chase.</p> <p>14 Q. Why did you do that?</p> <p>15 A. Because we were short cash.</p> <p>16 Q. Short for a particular purpose or</p> <p>17 just in general?</p> <p>18 A. I wouldn't describe it as a purpose.</p> <p>19 I would say that there were some events that</p> <p>20 led to that, being short cash, long collateral</p> <p>21 position.</p> <p>22 Q. Did somebody ask you to obtain this</p> <p>23 loan from Chase?</p> <p>24 A. Requesting loans from Chase was part</p> <p>25 of the responsibilities of the cash and</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 collateral management team at the end of the</p> <p>3 day after we balanced and we figured out what</p> <p>4 our position was, if there was a shortfall, we</p> <p>5 would request a loan. If there was excess,</p> <p>6 then there were some other options that we had</p> <p>7 available to us to earn a return on that cash.</p> <p>8 Q. Did you have to pledge any</p> <p>9 collateral in exchange for this approximately</p> <p>10 \$23 billion loan?</p> <p>11 A. Yes, there was collateral that was</p> <p>12 pledged.</p> <p>13 Q. Do you recall the value of that</p> <p>14 collateral or the amount of that collateral?</p> <p>15 A. I recall it was right around the</p> <p>16 amount that we needed, the cash that we needed.</p> <p>17 Q. And what was the nature of that</p> <p>18 collateral? Securities?</p> <p>19 A. Securities.</p> <p>20 Q. Were they proprietary securities of</p> <p>21 LBI?</p> <p>22 A. I think that that's a fair</p> <p>23 description, although without knowing the</p> <p>24 detail, you know, I couldn't answer that, you</p> <p>25 know, definitively.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Mr. Rothman, I'm</p> <p>3 sorry to interrupt, do you think that we</p> <p>4 could take a short break? I don't want</p> <p>5 to --</p> <p>6 MR. ROTHMAN: Absolutely.</p> <p>7 MR. C. GREEN: I just want to take a</p> <p>8 short break to check with the witness about</p> <p>9 a clarification that I am uncertain of.</p> <p>10 MR. ROTHMAN: Okay.</p> <p>11 MR. C. GREEN: And then we will be</p> <p>12 right back.</p> <p>13 (Recess was taken from 4:45 to</p> <p>14 4:50.)</p> <p>15 BY MR. ROTHMAN:</p> <p>16 Q. Mr. Fleming, I understand you want</p> <p>17 to clarify one of your prior answers. Is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Go ahead and do that.</p> <p>21 A. I had previously stated that I had</p> <p>22 made a request to JPMorgan Chase for a loan in</p> <p>23 the amount of 23 billion. That request was</p> <p>24 denied. I was told that we could not have a</p> <p>25 loan for \$23 billion. I proceeded to explain</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 to JPMorgan Chase how we wound up being short</p> <p>3 \$23 billion and long \$23 billion of collateral,</p> <p>4 which was basically two things. One, was that</p> <p>5 7 billion of assets had not been transferred</p> <p>6 over to Barclays and subsequently Lehman</p> <p>7 Brothers had not been paid \$7 billion. Second</p> <p>8 was that there was a \$15 billion repo that had</p> <p>9 been on the prior day that came off that we</p> <p>10 were unaware of until we balanced in the early</p> <p>11 morning of Thursday close of business. The</p> <p>12 combination of those two events caused us to be</p> <p>13 short cash \$23 billion long collateral.</p> <p>14 JPMorgan decided that they were going to book</p> <p>15 what's called a held-in-custody repo for</p> <p>16 \$15 billion between Lehman Brothers, Inc. and</p> <p>17 Barclays Capital, and that they were going to</p> <p>18 represent that the money due from Barclays</p> <p>19 failed. Then they would book a \$7 billion loan</p> <p>20 with Lehman. That is how we closed out the</p> <p>21 night.</p> <p>22 The next morning when we got on a</p> <p>23 conference call with everyone, with Barclays,</p> <p>24 with Lehman, with JPMorgan, the first order of</p> <p>25 business that JPMorgan wanted to get to was to</p>	<p>1 Fleming - Highly Confidential</p> <p>2 discuss the \$15 billion money fail and the</p> <p>3 held-in-custody repo. Barclays advised that</p> <p>4 they were not aware of that trade and were not</p> <p>5 honoring that trade, at which point Chase</p> <p>6 disabled our access to their systems and</p> <p>7 stopped communicating with us.</p> <p>8 It is my understanding, and I don't</p> <p>9 recall how I obtained this understanding, that</p> <p>10 JPMorgan Chase subsequently cancelled that HIC</p> <p>11 repo trade between Lehman Brothers, Inc. and</p> <p>12 Barclays and booked it as a loan with Lehman</p> <p>13 getting us to the 23 billion loan. Now --</p> <p>14 Q. That's the 15 billion piece?</p> <p>15 A. I'm sorry?</p> <p>16 Q. The HIC loan is the 15 billion</p> <p>17 piece?</p> <p>18 A. Yes. I cannot confirm to you today</p> <p>19 that that is what JPMorgan reflects on their</p> <p>20 books and records as what occurred on the</p> <p>21 evening of Thursday the 18th, but that is what</p> <p>22 I believe to be the events of that day.</p> <p>23 Q. You mentioned in that answer that</p> <p>24 \$7 billion in assets had not been transferred</p> <p>25 over to Barclays.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 A. Yes.</p> <p>3 Q. That was on Thursday night, the</p> <p>4 18th?</p> <p>5 A. Yes.</p> <p>6 Q. Was the \$7 billion in cash meant to</p> <p>7 be a replacement for those 7 billion assets</p> <p>8 that did not go on the 18th?</p> <p>9 MR. C. GREEN: Object to the extent</p> <p>10 it calls for speculation, but you may</p> <p>11 answer, if you know.</p> <p>12 A. I'm not sure which 7 billion of</p> <p>13 assets, what the underlying assets were, but</p> <p>14 it's my understanding that 7 billion of</p> <p>15 assets -- an additional 7 billion of assets</p> <p>16 would have moved over and Lehman Brothers, Inc.</p> <p>17 would have received \$7 billion in cash.</p> <p>18 Q. If you turn back to Exhibit 311B.</p> <p>19 We were talking about Mr. Burke's comment about</p> <p>20 whether the 42 billion, according to him,</p> <p>21 represented secure financing and probably not</p> <p>22 an overdraft with the bank, and I think you</p> <p>23 said you had discussions about this, you</p> <p>24 couldn't recall whether it was with Mr. Burke,</p> <p>25 but when you had discussions on this, did you</p>	<p>1 Fleming - Highly Confidential</p> <p>2 represent the significance of whether the money</p> <p>3 was a secured financing or an overdraft to the</p> <p>4 C3 calculation?</p> <p>5 MR. C. GREEN: Object to the form of</p> <p>6 the question.</p> <p>7 A. I explained the events as I knew</p> <p>8 them. It was not my role to be making a</p> <p>9 determination of those events as it relates to</p> <p>10 the computation of the 15C3 reserve</p> <p>11 requirements.</p> <p>12 Q. Did you know at the time you were</p> <p>13 making -- the time you were giving the</p> <p>14 explanation that you were giving, did you know</p> <p>15 that overdrafts are not a formulaed credit</p> <p>16 item?</p> <p>17 MR. C. GREEN: Object to the form of</p> <p>18 the question.</p> <p>19 Q. Just basically asking you if that is</p> <p>20 something that you would have known.</p> <p>21 A. They are a formula credit.</p> <p>22 Q. And is that something that you --</p> <p>23 A. I was aware of that fact, yes.</p> <p>24 Q. If you look at the bottom of that</p> <p>25 e-mail, Mr. Burke writes: "Senior staff at</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 both the SEC and FINRA have stated that the</p> <p>3 firm cannot withdraw any funds or securities</p> <p>4 from the reserve accounts without their staff</p> <p>5 reviewing the calculation and their approval."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Did you have that understanding at</p> <p>9 or around September 23rd, 2008?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. If you would take a look at the</p> <p>12 first page of the attachment, the top left-hand</p> <p>13 corner of the document notes that it's a draft</p> <p>14 as of 7:00 p.m.</p> <p>15 Is this document the type of</p> <p>16 document or form that you were familiar with?</p> <p>17 A. This is not a document that I</p> <p>18 produced. It is, I believe, a document</p> <p>19 produced by the regulatory group.</p> <p>20 Q. But you received documents that look</p> <p>21 like this?</p> <p>22 A. I may have.</p> <p>23 Q. Do you recognize this to be an</p> <p>24 analysis of the 15C3 reserves?</p> <p>25 A. It would appear to be, yes.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. And it's divided into the customer</p> <p>3 portion and the PAIB portion; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And then across the top it compares</p> <p>6 the amounts reserved on 9-17-08 in the second</p> <p>7 column; correct?</p> <p>8 A. Yes.</p> <p>9 Q. To the amounts that they are</p> <p>10 calculating for 9-19-08 in the first column?</p> <p>11 A. That's what it appears, yes.</p> <p>12 Q. So if you go down to the very</p> <p>13 bottom, the total segregated, they are saying</p> <p>14 that there is a \$1.4 billion variance between</p> <p>15 9-17 and 9-19. Is that how you understand this</p> <p>16 document?</p> <p>17 A. For PAIB, that's what it appears to</p> <p>18 be.</p> <p>19 Q. I think the last line actually</p> <p>20 aggregates the PAIB and the customer.</p> <p>21 A. Okay.</p> <p>22 Q. Now, if you look in the middle of</p> <p>23 the column under the customer portion and then</p> <p>24 under ADP, there is an entry for OCC</p> <p>25 proprietary qualified collateral. Do you see</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Do you know what that is?</p> <p>5 A. I can't say for certain. I have</p> <p>6 some general thoughts.</p> <p>7 Q. What are those thoughts?</p> <p>8 MR. C. GREEN: Object to the extent</p> <p>9 it calls for speculation.</p> <p>10 A. This would -- you know, again,</p> <p>11 Mr. Burke and/or the individuals producing this</p> <p>12 document are probably best to describe, you</p> <p>13 know, what each one of these different</p> <p>14 categories represents. I don't want to</p> <p>15 speculate.</p> <p>16 Q. Do you think this relates to the OCC</p> <p>17 margin deposit?</p> <p>18 A. Again, I'd be speculating if I</p> <p>19 answered that question.</p> <p>20 Q. Do you know if a portion of the OCC</p> <p>21 margin deposit is able to be counted toward the</p> <p>22 reserve requirement under 15C3?</p> <p>23 MR. C. GREEN: Object to the extent</p> <p>24 it calls for a legal conclusion.</p> <p>25 You can answer, if you know. Do you</p>	<p>1 Fleming - Highly Confidential</p> <p>2 have the question in mind?</p> <p>3 THE WITNESS: I'm sorry, are you</p> <p>4 waiting for me?</p> <p>5 MR. C. GREEN: I think there is a</p> <p>6 question pending.</p> <p>7 Q. The question was do you know if a</p> <p>8 portion of the OCC margin deposit is able to be</p> <p>9 counted toward the reserve requirement under</p> <p>10 15C3 and counsel objected to the extent that</p> <p>11 that called for a legal conclusion. We were</p> <p>12 waiting for you to give your understanding.</p> <p>13 A. I think that in certain cases</p> <p>14 collateral posted to the OCC would be counted</p> <p>15 as a debit in the formula.</p> <p>16 Q. You testified previously that your</p> <p>17 group would sometimes withdraw funds from the</p> <p>18 OCC margin deposits; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know if you are able to</p> <p>21 withdraw funds from the OCC margin deposit that</p> <p>22 are counted towards the C3 requirement?</p> <p>23 MR. C. GREEN: Object to the extent</p> <p>24 it calls for a legal conclusion.</p> <p>25 You may answer, if you know.</p>



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<p>1 Fleming - Highly Confidential</p> <p>2 A. The withdrawal or addition of margin</p> <p>3 to the OCC was done, you know, without any</p> <p>4 involvement with the reserve formula.</p> <p>5 Q. Would the people in your group</p> <p>6 compare the OCC margin requirements with the</p> <p>7 amounts that the regulatory department would</p> <p>8 post with customer margin in the 15C3</p> <p>9 calculation?</p> <p>10 A. No.</p> <p>11 MR. ROTHMAN: Mark as Exhibit 312B</p> <p>12 an e-mail from Mr. Tonucci to Mr. Jones.</p> <p>13 You are a CC on the e-mail and it's got a</p> <p>14 Bates stamp 21746.</p> <p>15 (Exhibit 312B, e-mail dated</p> <p>16 September 27, 2008, Bates stamped</p> <p>17 BCI-EX-(S)-00021746, with attached OCC</p> <p>18 Summary, marked for identification.)</p> <p>19 (Document review.)</p> <p>20 Q. Have you had a chance to look over</p> <p>21 the document?</p> <p>22 A. Yes.</p> <p>23 Q. So the bottom e-mail on the page</p> <p>24 Mr. Jones writes to Mr. Tonucci with a copy to</p> <p>25 you and Richard Golaszewski.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Can you tell me who Richard</p> <p>3 Golaszewski is?</p> <p>4 A. Richard is an analyst who worked for</p> <p>5 Craig.</p> <p>6 Q. This is Friday, September 26. Are</p> <p>7 you now at Barclays or are you still at Lehman?</p> <p>8 A. I think based on the -- I think</p> <p>9 Barclays at that point.</p> <p>10 Q. Is Mr. Golaszewski a Barclays</p> <p>11 employee?</p> <p>12 A. Yes, he is.</p> <p>13 Q. And did Mr. Jones also move from</p> <p>14 Lehman to Barclays?</p> <p>15 A. Yes, he did.</p> <p>16 Q. When you were at Lehman, were you an</p> <p>17 employee of LBHI, LBI, or both?</p> <p>18 MR. C. GREEN: Object to the extent</p> <p>19 it calls for a legal conclusion.</p> <p>20 Q. What did you consider yourself; do</p> <p>21 you know?</p> <p>22 A. I don't remember what my pay stub</p> <p>23 said. I don't remember.</p> <p>24 Q. Did you distinguish between the</p> <p>25 different Lehman entities?</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: You mean as an</p> <p>3 employee or --</p> <p>4 MR. ROTHMAN: Yes.</p> <p>5 A. For what purpose?</p> <p>6 Q. Withdrawn.</p> <p>7 So Mr. Jones writes to Mr. Tonucci,</p> <p>8 copying you and Mr. Golaszewski, and attaching</p> <p>9 a summary of the OCC margin requirements and</p> <p>10 associated collateral postings, and he writes:</p> <p>11 "I have a call in to regulatory to reconcile</p> <p>12 the 500 million they have posted for customer</p> <p>13 margin in the 15C3 calculation versus the 336</p> <p>14 million we reflect at the exchange." Do you</p> <p>15 see that?</p> <p>16 A. Uh-huh, yes.</p> <p>17 Q. When you got this e-mail, did you</p> <p>18 know what Mr. Jones was referring to when he</p> <p>19 wrote that?</p> <p>20 A. I don't recall this e-mail</p> <p>21 specifically.</p> <p>22 Q. Are you still doing the 15C3</p> <p>23 calculation for 9-19 at this point in time?</p> <p>24 MR. C. GREEN: Object to the form.</p> <p>25 Q. By "you" I mean the people at the</p>	<p>1 Fleming - Highly Confidential</p> <p>2 regulatory group that did that.</p> <p>3 A. I don't know at this point in time,</p> <p>4 the 26th of September, where the regulatory</p> <p>5 group was in terms of their calculations.</p> <p>6 Q. Do you know if there was ever a</p> <p>7 final calculation for 9-19?</p> <p>8 A. I don't know for certain. I would</p> <p>9 assume so.</p> <p>10 Q. Did you hear that there were</p> <p>11 difficulties in doing that calculation?</p> <p>12 MR. C. GREEN: Object to the form.</p> <p>13 Do you mean the final calculation that he</p> <p>14 is uncertain about?</p> <p>15 MR. ROTHMAN: No, the 9-19</p> <p>16 calculation that we saw a draft of a few</p> <p>17 documents ago.</p> <p>18 A. It is my understanding that there</p> <p>19 were difficulties in reconciling everything.</p> <p>20 There is a lot of information that feeds into</p> <p>21 the reserve formula, so if there is general</p> <p>22 reconciliation issues, it's going to impact the</p> <p>23 reserve calculation.</p> <p>24 Q. When you refer to general</p> <p>25 reconciliation issues, those are the issues you</p>

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<p>1 Fleming - Highly Confidential 2 have already told us about? 3 A. Yes. 4 Q. It was difficult to see certain 5 data, is that one of the problems? 6 A. Yes, information that in nonnal 7 course would be fed in electronically into our 8 systems, processes would be run and 9 reconciliations would be automatically 10 generated, those files were not sent in. Those 11 automatic reconciliations didn't occur. I'm 12 not even sure whether they are done reconciling 13 9-19 today. 14 Q. Do you know if the issue that 15 Mr. Jones raises in his e-mail was ever 16 reconciled? 17 A. I don't. 18 Q. If you look at the first page of the 19 attachment to Mr. Jones' e-mail, it's an OCC 20 summary. The first page. And under the 21 customer -- the top box is Lehman Brothers 22 positions. Do you see that? 23 A. Yes. 24 Q. And in the customer column he has 25 got treasuries and there is a figure of 336.20.</p>	<p>1 Fleming - Highly Confidential 2 A. Yes. 3 Q. Do you know if that's the 336 4 million he refers to -- Mr. Jones refers to in 5 his e-mail? 6 A. I don't know for certain. I don't 7 know that. 8 Q. Are treasuries qualified securities 9 under 15C3; do you know? 10 A. I believe so, yes. 11 MR. ROTHMAN: Let me show you what I 12 am going to mark as Exhibit 313B, an e-mail 13 from Mr. Tonucci to a number of people and 14 you are shown as a carbon copy. 15 Mr. Fleming, feel free to read 16 through the entire e-mail string. I am 17 only going to ask you about the first 18 e-mail in the string, which is from Martin 19 Kelly to Mr. Lowitt and others. 20 For the record, the first page of 21 the exhibit is Bates stamped 3945. 22 We will withdraw that exhibit. Just 23 for the record, we are going to withdraw 24 that exhibit because it had some 25 handwritten annotations on it that our team</p>
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<p>1 Fleming - Highly Confidential 2 had -- meaning the Hughes Hubbard team had 3 added to the document. We will move on to 4 the next one. 5 We will mark as Exhibit 313B an 6 e-mail from Mr. Tonucci to Mr. Blackwell, 7 Mr. Fleming and Mr. Ullman and Mr. Dorogoff 8 with a Bates stamp of 4784. 9 (Exhibit 313B, e-mail dated October 10 1, 2008, Bates stamped BCI-EX-(S)-00004784, 11 marked for identification.) 12 Q. This e-mail is dated October 1 of 13 2008. Do you recall receiving this from 14 Mr. Tonucci? 15 A. It doesn't stick out as a memorable 16 e-mail. 17 Q. Do you know what this e-mail relates 18 to? 19 A. I believe so. 20 Q. What do you believe it relates to? 21 A. I believe this relates to a customer 22 who has purchased securities on margin that has 23 requested an account transfer to another 24 broker. 25 Q. What was the issue with the</p>	<p>1 Fleming - Highly Confidential 2 collateral that had been pledged against the 3 debt? 4 MR. C. GREEN: Object to the form. 5 A. I don't know whether there was an 6 issue. I think this was a question. 7 Q. What was Mr. Tonucci asking? Do you 8 have any understanding of what he was trying to 9 determine? 10 MR. C. GREEN: Object to the form. 11 Calls for speculation. 12 A. I believe he was asking whether BCI 13 gets reimbursed for the margin loan when an 14 account is transferred to another broker. 15 Q. This is the margin loan that BCI 16 would have made to its customer as opposed to 17 the margin deposit that BCI would post at the 18 OCC? 19 A. I believe this is in reference to 20 Reg T margin. 21 Q. Do you know what a clearing fund 22 deposit is? Does that phrase have any meaning 23 to you? 24 A. Yes. 25 Q. What is that?</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 A. My understanding is it's an initial</p> <p>3 deposit that is made to support the clearing</p> <p>4 activities of the customer.</p> <p>5 Q. Who makes the deposit?</p> <p>6 A. The firm that holds the account with</p> <p>7 the clearing org.</p> <p>8 MR. ROTHMAN: Let's mark as</p> <p>9 Exhibit 314B an e-mail from Mr. Tonucci to</p> <p>10 you dated September 21st, 2008.</p> <p>11 (Exhibit 314B, e-mail dated 9-21-08,</p> <p>12 marked for identification.)</p> <p>13 Q. The second e-mail on the page is</p> <p>14 from you to Mr. Tonucci, the subject is cash,</p> <p>15 and you ask: "Can we look to the 1 billion</p> <p>16 Citi CLS clearing deposit in LBI as a source of</p> <p>17 funds for Barcap."</p> <p>18 Do you recall sending this e-mail to</p> <p>19 Mr. Tonucci?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Can you tell me why you were asking</p> <p>22 him this question?</p> <p>23 A. I was asking him what the status of</p> <p>24 this -- what is described in here as a clearing</p> <p>25 deposit with Citibank.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Was it a clearing deposit at</p> <p>3 Citibank?</p> <p>4 A. I don't believe that it would fall</p> <p>5 under the technical definition of a clearing</p> <p>6 deposit. This was a mandated additional</p> <p>7 deposit that we had to make in the days leading</p> <p>8 up to bankruptcy.</p> <p>9 Q. Mandated by Citi?</p> <p>10 A. That's correct, Citi as our CLS</p> <p>11 settlement agent.</p> <p>12 Q. What does CLS stand for?</p> <p>13 A. It stands for continuous linked</p> <p>14 settlement, which is a foreign exchange netting</p> <p>15 facility.</p> <p>16 Q. And there is 1 billion -- I'm sorry.</p> <p>17 This additional deposit that you -- withdrawn.</p> <p>18 This additional deposit was in the</p> <p>19 amount of a billion dollars; is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. And is it property that's held to</p> <p>22 secure obligations under the exchange-traded</p> <p>23 derivatives?</p> <p>24 MR. C. GREEN: Object to the extent</p> <p>25 the question calls for a legal conclusion.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 You may answer.</p> <p>3 A. It was my understanding that this</p> <p>4 additional \$1 billion of cash was to protect</p> <p>5 Citibank against the intra-day exposures</p> <p>6 associated with fails in the foreign exchange</p> <p>7 market.</p> <p>8 Q. You are asking Mr. Tonucci if it</p> <p>9 could be a source of funds for Barcap. Why are</p> <p>10 you asking him that particular question?</p> <p>11 A. I was aware of the fact that there</p> <p>12 was a shortfall of some sort as it related to</p> <p>13 the transfer and, you know, as a result, a</p> <p>14 reconciliation process was initiated to try to</p> <p>15 locate unencumbered assets and, in my opinion,</p> <p>16 if we had settled our obligations with</p> <p>17 Citibank, this would constitute an unencumbered</p> <p>18 asset.</p> <p>19 Q. By the transfer you mean the</p> <p>20 transfer that occurred on the Thursday, the</p> <p>21 20th?</p> <p>22 A. Yes.</p> <p>23 Q. The transfer of securities to</p> <p>24 Barclays in exchange for the loan that came</p> <p>25 back to --</p>	<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: I object to the form.</p> <p>3 A. Well, let me rephrase that. I</p> <p>4 don't -- I did not know whether it was specific</p> <p>5 to that transfer. I was aware of a general</p> <p>6 shortfall, but I was not advised of the details</p> <p>7 behind it and what it pertained to.</p> <p>8 Q. Mr. Tonucci writes back to you: "We</p> <p>9 have put them on this."</p> <p>10 Do you know what he meant by that?</p> <p>11 MR. C. GREEN: Object to the form.</p> <p>12 Calls for speculation.</p> <p>13 A. I'm not sure what that means.</p> <p>14 Q. Did LBI get the 1 billion clearing</p> <p>15 deposit released from Citi?</p> <p>16 MR. C. GREEN: Object to the extent</p> <p>17 it mischaracterizes his testimony. I think</p> <p>18 he said it was not a true clearing deposit.</p> <p>19 MR. ROTHMAN: But his e-mail calls</p> <p>20 it a clearing deposit. I don't want to</p> <p>21 quibble.</p> <p>22 Q. Did you get this \$1 billion deposit</p> <p>23 back from Citi?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Do you know what happened to that</p>

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<p>1 Fleming - Highly Confidential 2 \$1 billion deposit? 3 A. No, I do not. 4 Q. This is a document that was marked 5 at a prior deposition as Exhibit 182. 6 As always, Mr. Fleming, feel free to 7 look through the whole thing. I am only going 8 to ask you questions about the bottom-most 9 e-mail on the page. 10 (Document review.) 11 A. Okay. 12 Q. The bottom e-mail is from 13 Mr. Tonucci to you and Mr. Azerad dated 14 Saturday, September 20, 2008. 15 Do you recall receiving this e-mail 16 from Mr. Tonucci? 17 A. I don't recall this. 18 Q. The subject of the e-mail is the 19 non-actionable box. I apologize if you have 20 already explained this to us, but could you 21 tell me what that is? 22 MR. C. GREEN: Object to the form. 23 A. In the normal course of business the 24 non-actionable box represented assets that 25 could not be financed.</p>	<p>1 Fleming - Highly Confidential 2 Q. Does the non-actionable box refer to 3 a specific depository? 4 A. No. 5 Q. And so the assets that cannot be 6 financed could be in various places; is that 7 correct? 8 A. That is correct. 9 Q. And Mr. Tonucci is saying some may 10 be in the DTC box which may be mixed up with 11 the tri-party pledge on Thursday. Do you see 12 that? 13 MR. C. GREEN: Object to the form of 14 the question. 15 A. I see that. 16 Q. Do you know what that means or what 17 it means to you? 18 A. That means that -- my interpretation 19 of this is that we wanted to confirm that 20 JPMorgan Chase didn't seize more assets than 21 they were entitled to as a result of the box 22 loan. 23 Q. Are you saying that JPMorgan was 24 trying to determine whether JPMorgan seized 25 more assets than they were entitled to from the</p>
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<p>1 Fleming - Highly Confidential 2 DTC box? 3 MR. C. GREEN: Object to the form. 4 A. The way that this typically works is 5 that your assets at DTC are pledged to JPMorgan 6 for purposes of JPMorgan uploading them into 7 their system to be available as collateral for 8 financing transactions, so it is conceivable 9 that we pledged over more assets than what we 10 had financed and that Chase could have 11 conceivably seized those assets. 12 Q. I am going to show you what's been 13 marked in a prior deposition as Exhibit 152B. 14 MR. C. GREEN: Rothman, do you have 15 any idea how much longer you expect to be? 16 MR. ROTHMAN: I have one left after 17 this. 18 MR. C. GREEN: One exhibit? 19 MR. ROTHMAN: Yes. 20 Q. Have you had a chance to look at 21 Exhibit 152B? 22 A. Yes. 23 Q. The e-mail at the bottom is from 24 Mr. Tonucci to Mr. Hraska copying you and 25 Mr. Blackwell. Do you see that?</p>	<p>1 Fleming - Highly Confidential 2 A. Yes, I do. 3 Q. Mr. Tonucci tells Mr. Hraska: "You 4 should plan on moving all the unencumbered 5 collateral in the DTC box first thing." 6 Do you have any understanding of 7 what Mr. Tonucci is telling Mr. Hraska to do 8 here? 9 MR. C. GREEN: Object to the extent 10 it calls for speculation. 11 A. I do not know the location to which 12 he is referring to in terms of moving the 13 collateral. 14 Q. Underneath he writes: "Should 15 correspond as closely as possible to list 16 agreed with Barclays over the weekend." 17 I was going to ask you if you knew 18 what the list is or was. 19 A. I don't know what the list was. I 20 can tell you that people were seizing 21 collateral left, right and center. DTC, Chase, 22 just about everybody. We were very mindful of 23 that. Not only our securities, but our cash 24 positions too were being seized by the banks 25 and there was an effort to try to safeguard</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 some of those assets. I'm not sure whether</p> <p>3 this was in reference to that, whether they</p> <p>4 were trying to put it into a location that we</p> <p>5 knew wouldn't be seized by any of the creditors</p> <p>6 or any of the banks or anything like that. I</p> <p>7 just don't -- I don't know -- I don't recall</p> <p>8 what he is referencing in this.</p> <p>9 MR. ROTHMAN: Let's mark as</p> <p>10 Exhibit 315B an e-mail from you to</p> <p>11 Mr. Tonucci dated September 21, 2008.</p> <p>12 (Exhibit 315B, e-mail dated</p> <p>13 9-21-2008, marked for identification.)</p> <p>14 (Document review.)</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q. The first e-mail in the string you</p> <p>17 write to Mr. Tonucci: "The statement from the</p> <p>18 OCC reflects a large excess position in house</p> <p>19 and customer. House has excess of 444 million</p> <p>20 and customer 244. I do not know how accessible</p> <p>21 this is." Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. When you wrote "I do not know how</p> <p>24 accessible this is," what did you mean?</p> <p>25 A. I believe what I was referring to</p>	<p>1 Fleming - Highly Confidential</p> <p>2 was that if there was a request to access that</p> <p>3 excess margin, I don't know whether we would</p> <p>4 have been able to execute against that request.</p> <p>5 Q. Why don't you know that?</p> <p>6 MR. C. GREEN: Object to the form of</p> <p>7 the question.</p> <p>8 THE WITNESS: Answer?</p> <p>9 MR. C. GREEN: Oh, yes, you can go</p> <p>10 ahead and answer. I'm sorry.</p> <p>11 A. Because of the uncertainty at that</p> <p>12 point. That was Sunday night after we filed</p> <p>13 for bankruptcy. There was a tremendous amount</p> <p>14 of uncertainty in every aspect of what we were</p> <p>15 doing.</p> <p>16 Q. Are you telling me that there was</p> <p>17 uncertainty as to whether there was, in fact, a</p> <p>18 large excess position in house and customer?</p> <p>19 A. I think there was uncertainty as to</p> <p>20 why there was excess that much.</p> <p>21 Q. Is that unusual for there to be</p> <p>22 excess of that much?</p> <p>23 A. I think in normal course that may be</p> <p>24 considered a lot of excess in the account. As</p> <p>25 I had stated earlier, that excess was a normal</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 event, but I would say that 600, 700 million of</p> <p>3 excess was a lot.</p> <p>4 Q. Is there an amount of excess in the</p> <p>5 ordinary course that you try to keep in the</p> <p>6 account?</p> <p>7 MR. C. GREEN: Object to the form of</p> <p>8 the question.</p> <p>9 A. There was not a target amount that</p> <p>10 we kept as excess. We didn't have a target</p> <p>11 amount.</p> <p>12 Q. I think you testified before that</p> <p>13 there were ambiguities regarding the OCC margin</p> <p>14 deposit around this time? Do you recall that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Was one of the ambiguities over who</p> <p>17 would own the excess margin amount?</p> <p>18 MR. C. GREEN: Object to the form of</p> <p>19 the question.</p> <p>20 A. No, that was not something that --</p> <p>21 that was not a question posed to me. That was</p> <p>22 not something that I was dealing with.</p> <p>23 Q. What did you mean by "ambiguities"?</p> <p>24 A. What I meant was there was</p> <p>25 unreconciled positions. There was an option</p>	<p>1 Fleming - Highly Confidential</p> <p>2 expiration on that Friday. That, again, we</p> <p>3 were locked out of our systems. Our books and</p> <p>4 records weren't updated and reflected properly.</p> <p>5 Not just as it relates to OCC, but across the</p> <p>6 board in, I would say, every asset class.</p> <p>7 Q. I think you testified earlier that</p> <p>8 there were uncertainty about whether certain</p> <p>9 accounts were LBI's or Barclays'. Do you</p> <p>10 recall that?</p> <p>11 A. Was this in relation to what, to the</p> <p>12 OCC?</p> <p>13 Q. That's my next question.</p> <p>14 A. Okay. I don't remember what that</p> <p>15 comment --</p> <p>16 Q. What the context was for that</p> <p>17 comment?</p> <p>18 MR. C. GREEN: I don't remember that</p> <p>19 comment, not to volunteer information,</p> <p>20 but...</p> <p>21 Q. I mean, I will just ask you. Around</p> <p>22 this time period that we have been talking</p> <p>23 about, the weekend of September 20th, 21st,</p> <p>24 22nd, was there any uncertainty as to any</p> <p>25 accounts, whether they were owned at that point</p>

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<p>1 Fleming - Highly Confidential</p> <p>2 by LBI or whether they were going to be owned</p> <p>3 by Barclays?</p> <p>4 MR. C. GREEN: You are asking him</p> <p>5 was he uncertain or was there uncertainty</p> <p>6 generally?</p> <p>7 MR. ROTHMAN: Did he hear about any</p> <p>8 uncertainty.</p> <p>9 A. There was uncertainty. Okay. The</p> <p>10 terms of the agreement had not been</p> <p>11 communicated, to my knowledge, to anyone in the</p> <p>12 back office. The status of our DTC accounts,</p> <p>13 the status of our Chase accounts, the status of</p> <p>14 our OCC accounts or, for that matter, any other</p> <p>15 margin exchange was not clear to us.</p> <p>16 Q. Did you ever hear that the DTC was</p> <p>17 concerned about LBI's open positions, who was</p> <p>18 going to fund the fails?</p> <p>19 A. I recall there being some</p> <p>20 discussions as it related to the DTC.</p> <p>21 Q. What do you recall about that?</p> <p>22 A. There were concerns, I believe,</p> <p>23 about the NSCC positions that were due to</p> <p>24 settle. I don't -- I'm not, you know, an</p> <p>25 expert in the mechanics of NSCC and the</p>	<p>1 Fleming - Highly Confidential</p> <p>2 relationship between NSCC and DTC, but I</p> <p>3 believe there were some concerns around that</p> <p>4 set of activity.</p> <p>5 Q. Whose concerns? You are talking</p> <p>6 about Lehman having concerns or are you talking</p> <p>7 about the clearing agencies having concerns?</p> <p>8 A. I thought it was the DTC themselves.</p> <p>9 Q. Do you know what those concerns</p> <p>10 were?</p> <p>11 A. I don't know the specific details of</p> <p>12 exactly what their concerns were.</p> <p>13 Q. Do you know generally what their</p> <p>14 concerns were?</p> <p>15 A. I believe it had to do with NSCC</p> <p>16 trades that were due to settle post bankruptcy.</p> <p>17 Q. Was there a concern about whether</p> <p>18 those trades actually would settle?</p> <p>19 A. Again, that's the general concern</p> <p>20 that I was aware of, but the detailed specifics</p> <p>21 behind it either I wasn't made aware of or I</p> <p>22 can't remember at this point.</p> <p>23 MR. ROTHMAN: Thank you,</p> <p>24 Mr. Fleming. That's all the questions I</p> <p>25 have.</p>
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<p>1 Fleming - Highly Confidential</p> <p>2 MR. C. GREEN: Does anyone else have</p> <p>3 any questions?</p> <p>4 MS. CARRERO: We are done.</p> <p>5 MR. C. GREEN: I might have one or</p> <p>6 two questions. I just need to look at the</p> <p>7 transcript.</p> <p>8 EXAMINATION BY</p> <p>9 MR. C. GREEN:</p> <p>10 Q. Mr. Fleming, can you get</p> <p>11 Exhibit 314B.</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember Mr. Rothman asking</p> <p>14 you about the 1 billion Citi CLS clearing</p> <p>15 deposit that is referenced in that exhibit? Do</p> <p>16 you remember he asked you some questions about</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember you testified that</p> <p>20 "it was my understanding that this additional 1</p> <p>21 billion of cash was to protect Citibank against</p> <p>22 the intra-day exposures associated with fails</p> <p>23 in the foreign exchange markets," do you recall</p> <p>24 that testimony?</p> <p>25 A. Yes.</p>	<p>1 Fleming - Highly Confidential</p> <p>2 Q. Was that amount deposited with</p> <p>3 Citibank as collateral?</p> <p>4 A. That was collateralizing the</p> <p>5 intra-day exposure that Citibank had as</p> <p>6 settlement agent for Lehman Brothers, Inc.</p> <p>7 MR. C. GREEN: I don't have any</p> <p>8 further questions.</p> <p>9 MR. ROTHMAN: Nothing further for</p> <p>10 me.</p> <p>11 MS. CARRERO: Nothing further.</p> <p>12 MR. WHITMER: No questions.</p> <p>13 (Time noted: 5:57 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17 -----</p> <p>18 DANIEL JOSEPH FLEMING</p> <p>19</p> <p>20 Subscribed and sworn to before me</p> <p>21 this day of 2009.</p> <p>22</p> <p>23 -----</p> <p>24</p> <p>25</p>

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1		1	
2	CERTIFICATE	2	-----INDEX-----
3		3	
4	STATE OF NEW YORK )	4	WITNESS EXAMINATION BY PAGE
5	) ss.:	5	DANIEL JOSEPH FLEMING MS. CARRERO 6
6	COUNTY OF NASSAU )	6	
7		7	MR. ROTHMAN 156
8	I, KRISTIN KOCH, a Notary Public	8	MR. C. GREEN 208
9	within and for the State of New York, do	9	-----EXHIBITS-----
10	hereby certify:	10	NUMBER PAGE LINE
11	That DANIEL JOSEPH FLEMING, the	11	Exhibit 294B
12	witness whose deposition is hereinbefore	12	E-mail dated September 15, 2008,
13	set forth, was duly sworn by me and that	13	Bates stamped 10302690, and Chase
14	such deposition is a true record of the	14	Tri-Party Haircut Summary Bates
15	testimony given by such witness.	15	stamped 10308382..... 40 21
16	I further certify that I am not	16	Exhibit 295B
17	related to any of the parties to this	17	E-mail dated 9-18-2008..... 64 3
18	action by blood or marriage; and that I am	18	Exhibit 296B
19	in no way interested in the outcome of	19	E-mail dated September 18, 2008,
20	this matter.	20	Bates stamped 10303223..... 69 7
21	IN WITNESS WHEREOF, I have hereunto	21	Exhibit 297B
22	set my hand this 28th day of August, 2009.	22	E-mail dated 9-18-2008..... 72 18
23		23	Exhibit 298B
24	KRISTIN KOCH, RPR, RMR, CRR, CLR	24	E-mail dated 9-21-2008..... 74 6
25		25	Exhibit 299B
			E-mail dated 9-19-2008..... 89 19
			Exhibit 300B
			E-mail dated September 23, 2008,
			Bates stamped BCI-EX-(S)-00019269
			and BCI-EX-(S)-00019270..... 111 25
			Exhibit 301B
			E-mail dated September 21, 2008,
			Bates stamped 10307085..... 123 19
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2	-----EXHIBITS-----	2	-----EXHIBITS-----
3		3	
4	NUMBER PAGE LINE	4	NUMBER PAGE LINE
5	Exhibit 302B	5	Exhibit 311B
6	E-mail dated September 22, 2008,	6	E-mail dated September 23, 2008,
7	Bates stamped BCI-EX-(S)-00018817.... 127 9	7	Bates stamped BCI-EX-(S)-00004061
8	Exhibit 303B	8	and BCI-EX-(S)-00004062, with
9	E-mail dated September 19, 2008,	9	attached Lehman Brothers, Inc.
10	Bates stamped 465433..... 129 6	10	Customer/PAIB Reserve Analysis..... 171 20
11	Exhibit 304B	11	Exhibit 312B
12	E-mail dated September 17, 2008,	12	E-mail dated September 27, 2008,
13	Bates stamped 10306758, with	13	Bates stamped BCI-EX-(S)-00021746,
14	attached spread sheet, Bates	14	with attached OCC summary..... 186 15
15	stamped 10306405..... 132 8	15	Exhibit 313B
16	Exhibit 305B	16	E-mail dated October 1, 2008, Bates
17	E-mail dated September 23, 2008,	17	stamped BCI-EX-(S)-00004784..... 192 9
18	Bates stamped BCI-EX-(S)-000191987	18	Exhibit 314B
19	through BCI-EX-(S)-000191194..... 139 10	19	E-mail dated 9-21-08..... 194 11
20	Exhibit 306B	20	Exhibit 315B
21	E-mail dated September 22, 2008,	21	E-mail dated 9-21-2008..... 202 12
22	Bates stamped 10295071..... 142 12	22	
23	Exhibit 307B	23	
24	Letter dated September 22, 2008,	24	
25	Bates stamped BCI-EX-00077308	25	
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	E-mail dated September 25, 2008,		
	Bates stamped BCI-EX-(S)-00011649		
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	E-mail dated September 23, 2008,		
	Bates stamped BCI-EX-(S)-00019297		
	and BCI-EX-(S)-00019298..... 168 24		

1  
2 ERRATA SHEET FOR THE TRANSCRIPT OF:  
3 Case Name: In re: Lehman Brothers  
4 Dep. Date: August 28, 2009  
5 Deponent: Daniel Joseph Fleming  
6  
7 CORRECTIONS:  
8  
9 Pg. Ln. Now Reads Should Read Reason  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21 Signature of Deponent  
22 SUBSCRIBED AND SWORN BEFORE ME  
23 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.  
24  
25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_